

TOLERATION: BETWEEN RESPECT AND FEAR

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Declaration

I hereby declare that this thesis is my original work and it has been written by me in its entirety. I have duly acknowledged all the sources of information which have been used in the thesis.

This thesis has also not been submitted for any degree in any university previously.

A handwritten signature in blue ink, appearing to read 'Cai Xianhui', is written above a horizontal line.

Cai Xianhui Nicholas

10 January 2017

In memory of Ben

*“The self-same moment I could pray;
And from my neck so free
The Albatross fell off, and sank
Like lead into the sea.”*

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- Nicholas Cai

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1. The concept of toleration

Toleration reconsidered

“Those who distinguish between civil and theological intolerance are mistaken, in my opinion. The two tolerances are inseparable. It is impossible to live in peace with people one believes to be damned; to love them would be to hate the God who punishes them; one must absolutely bring them back [to the fold] or torment them.”¹

Toleration, according to Jean Hampton, is the “substantive heart of liberalism”, and many other authors within the liberal tradition of political thought acknowledge its central importance.² While we may now consider toleration to be a duty of just citizens and a necessary feature of a just state, it was in fact an infrequent achievement in the past, and very often unstable.³ The philosophical discourse of toleration has a long history, and is intimately bound up with the intellectual history of liberalism. This is in great part because both the arguments for toleration and the intellectual history of liberalism are informed by the same

¹ Jean-Jacques Rousseau, *Rousseau: “The Social Contract” and Other Later Political Writings*, ed. Victor Gourevitch, unknown edition (Cambridge: Cambridge University Press, 1997), 151.

² See John Rawls, *A Theory of Justice* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1999), 186–90; John Rawls, *Political Liberalism* (New York: Columbia University Press, 2005), xxiii–xxvi; See also Ten Chin Liew, “Liberal Toleration,” in *A Conception Of Toleration* (London ; New York: Cavendish Square Publishing, 2004); Chin Liew Ten, “A Conception of Toleration,” in *A Conception Of Toleration* (London ; New York: Cavendish Square Publishing, 2004); Andrew Jason Cohen, *Toleration*, 1 edition (Cambridge, UK: Polity, 2014), 8–18; Rainer Forst, *Toleration in Conflict: Past and Present* (Cambridge; New York: Cambridge University Press, 2013), 171; Susan Mendus, *Toleration and the Limits of Liberalism* (Atlantic Highlands, NJ: Humanities Pr, 1989), 3–4.

³ Judith N. Shklar, “The Liberalism of Fear,” in *Liberalism and the Moral Life*, ed. Nancy L. Rosenblum (Cambridge, Mass.: Harvard University Press, 1991), 22; Ten Chin Liew, “Religious Toleration and Beyond,” in *A Conception Of Toleration* (London ; New York: Cavendish Square Publishing, 2004), 38.

series of historical events and motivations: the overriding theme in these events is that of religious conflict, and the great urgency to find a way to manage, if not resolve them.⁴ The fact that the religious and moral convictions of ordinary citizens can be harnessed in this manner is well attested to by history, often with undesirable and even disastrous effects on society and civil peace. In spite of the different historical context in which these issues arose and their marked difference from ours, roughly the same set of philosophical concerns are present, namely: how do we manage conflicts between people of different religious / moral persuasions in a manner which will allow us to coexist peacefully and fruitfully? This is perhaps why many still return to the arguments of Locke, Bayle, Spinoza, and many others, for reasons beyond antiquarian curiosity.⁵

A further question can be asked about various conceptions of toleration: are they necessarily dependent on particular cultural, historical and political contexts for their persuasive force, or can they appeal to a broad audience from different backgrounds? As mentioned, the intellectual history of toleration over the last 500 or so years is closely tied to the intellectual history of Liberalism, and both in great part are responses to the religious and political conflict in continental Europe, in which Christianity was the dominant cultural and religious force. It is thus no surprise that Locke and Bayle, two of the most prominent philosophers

⁴ This is surely not the only way for the historical relationship between toleration and liberalism to be understood; perhaps the problem is primarily one of political ambition, and religious differences are only marshalled towards this end. Thus authors such as Machiavelli have focused on the political use of religion, illustrating that religious piety is often only a cover for political motivations and ends.

⁵ See E.M Curley, *Bayle vs. Spinoza on Toleration* (Voorschoten: Uitgeverij Spinozahuis, 2009), among others.

who argued for toleration appealed to aspects and doctrines of Christianity in their works on the subject.⁶ It is also interesting to note that in Christian Europe a great part of such conflict was not with faiths other than Christianity, but within it. Such doctrinal differences were not taken any less seriously by political and religious authorities and dissenters, and were often characterized by intolerance, often to the point of cruelty.⁷

However, in our modern world characterized by cosmopolitanism, different religions (along with a growing number of secular doctrines like humanism which disclaim the label) can exist even within the smallest of geographical boundaries. It no longer seems sufficient (or even possible) for a theory of toleration to respond to just one dominant religious tradition or history, given that different peoples are now the subject and intended audience of such a theory. In this paper, I am primarily concerned with developing a particular conception of toleration which can answer the demands of our present circumstances. Contra Rousseau, I believe that toleration is a living possibility for many today, and I argue that it is possible for us to understand in a principled fashion the grounds of tolerating those we believe to be morally wrong. Such an account of toleration can be found in Rawls' idea of Political Liberalism, and the "burdens of judgment" is a central element in grounding this principled account of toleration. To the extent that such an argument is successful, we have good reasons that underwrite the continued

⁶ See John Locke, *Locke on Toleration*, ed. Richard Vernon (Cambridge; New York: Cambridge University Press, 2010); Forst, *Toleration in Conflict*, 185, 223; Chin Liew, "Religious Toleration and Beyond," 39–47.

⁷ Leonard Verduin and Franklin H. Littell, *The Reformers and Their Stepchildren* (Paris, Ark.: The Baptist Standard Bearer, 2001), 11–20, 50–51.

practice of toleration in a multi-cultural, multi-religious state. I begin by examining the concept of toleration, distinguishing it from other related attitudes including indifference and moral skepticism. I then provide a brief taxonomy of arguments for toleration: this is not meant to be exhaustive, but rather my hope is that it will highlight the strengths of the conception I will examine in greater detail later. I will then move on to examine physician assisted suicide as a case of moral disagreement, and attempt to draw out some implications of accepting a Rawlsian conception of toleration. The chief thought is that though one may not hold certain controversial practices like physician assisted suicide to be the right course of action for oneself, this is fully compatible with the (moral and legal) right of others to exercise it should be passed as law. However, at the level of constitutional and legal debate, one's right to physician assisted suicide is far from being a done deal, even without including explicitly religious arguments. I will then reply to one critic of Rawls, and examine the relative merits of Shklar's liberalism of fear and the limits of principled arguments for toleration.

The bare bones concept of toleration

What is toleration? Before we begin discussing the content and appraising the different conceptions of toleration, it is necessary for us to analyze the concept itself. Fortunately, this is not an area mired in deep controversy; very roughly, there are 2 necessary components of the concept of toleration, formally speaking. Firstly, an entity A tolerates X, only if A does not actively interfere to prohibit X (or the practice of X) from taking place. In common parlance, entities such as individuals, communities, and the state are described as being tolerant, and

subjects of toleration. Sometimes, we even speak of belief systems and religious doctrines as being tolerant.⁸

Secondly, if one wants to speak of A as tolerating X (regardless of whether X refers to behavior, practices, beliefs, or expressed views), X must be *objectionable* in some non-trivial sense to A.⁹ Parents sometimes tolerate the bad behavior of their children who they know to be feeling unwell, while recognizing that such behavior is normally unacceptable or objectionable. This also explains why, as T.S. Eliot once said, “the Christian does not want to be tolerated”, in that being tolerated implies that there is something bad, mistaken, or objectionable about the Christian’s beliefs. Thus as some have noted¹⁰, A tolerating X precludes A being *indifferent* towards X. If one does not take action against street racers disturbing the peace of a neighborhood because one neither likes nor dislikes it, it would hardly make sense to call him/her tolerant of street racing. There must be some degree of annoyance or disapproval present, however slight, for us to speak of non-interference as tolerating something. A broad survey of contemporary authors on the topic of toleration finds widespread acceptance on this, although some have argued for a more expansive definition.¹¹

⁸ Also, the attitude and practice of toleration is sometimes distinguished. See Forst, *Toleration in Conflict*, 26; Bernard Williams, “Toleration, a Political or Moral Question?,” in *In the Beginning Was the Deed: Realism and Moralism in Political Argument*, ed. Geoffrey Hawthorn (Princeton, N.J.: Princeton University Press, 2005), 128–30.

⁹ It may very well be that the most important sense of being objectionable is a *moral* one, but it makes sense for us to speak of aesthetic (and perhaps also other senses of) objectionableness. See Cohen, *Toleration*, 14–16; Forst, *Toleration in Conflict*, 19.

¹⁰ Andrew Jason Cohen, “What Toleration Is,” *Ethics* 115, no. 1 (2004): 71.: “Put another way, we must care.”

¹¹ David Heyd, “Education to Toleration: Some Philosophical Obstacles and Their Resolution,” in *The Culture of Toleration in Diverse Societies: Reasonable Tolerance*, ed. Catriona Mckinnon and Dario Castiglione, 1 edition (Manchester: Manchester University Press, 2008), 200–201.

Provisionally,

An entity A tolerates X (a practice, behavior etc.) just in case that 1) A does not actively interfere with X, 2) A finds X objectionable in some non-trivial sense

What perhaps explains the resemblance between indifference and toleration is that indifference produces similar effects as tolerant behavior does in many cases: the external effects of a person who is tolerant towards street racing may not be all that different from one who is indifferent – they both do not take action to interfere with the respective entities in question. In one case the difference becomes clearer: A tolerant individual may at times attempt to persuade or reason with the person he/she tolerates, but the indifferent individual would not be similarly motivated.¹² Put simply, the tolerant individual cares about, and is not indifferent to what is being tolerated. What distinguishes the two are very different internal attitudes; depending on the degree of dislike, keeping oneself from actively interfering can potentially be quite demanding on the tolerant individual. The indifferent person bears no such burden. Thus, the tolerant individual seems to be owed an argument for the necessity and justice of toleration, in a way the indifferent person is not.¹³ While this in some ways may be an argument for the conclusion that indifference is preferable to toleration, in many prominent cases of moral and political disagreement this is extremely

¹² Cohen, “What Toleration Is,” 85–86.

¹³ Heyd, “Education to Toleration: Some Philosophical Obstacles and Their Resolution,” 198.: “Toleration...is necessarily concerned with suffering; it has a price; toleration can never arise out of apathy”

difficult to achieve, given the deep seated and “non-negotiable”¹⁴ nature of many of our moral convictions. The history of the American debate concerning abortion (and regrettably at times, violent opposition) is a prime example. It is precisely when indifference is not an option, that toleration becomes necessary.

Many commentators have also argued that moral skepticism is connected to the practice and attitude of toleration. Moral skepticism as I understand it is the thesis that the idea of moral value is itself questionable, that the possibility of moral knowledge is doubtful (in the extreme case, impossible).¹⁵ Leaving aside the cases of sophisticated or partial skeptics¹⁶, moral skeptics by definition do not (and cannot) hold that particular practice to be morally objectionable from the standpoint of a set of moral beliefs. If we limit the kind of objection required to specify tolerant behavior to moral objection, we will be forced to reason in the following manner: the moral skeptic may appear to exhibit tolerant behavior, but in actual fact does not think it morally false, wrong or mistaken. Thus the skeptic cannot be said to have satisfied this component of toleration. What the skeptic can be said to find objectionable is not a particular practice or behavior, but the idea of moral objectivity itself. However, it is at least conceivable that the moral skeptic is capable of strong feelings of dislike and disgust for others who strongly insist on their moral convictions. If we expand the concept of toleration to also

¹⁴ Rawls, *Political Liberalism*, 310: “...affirming such views and the conceptions of the good to which they give rise is recognized as non-negotiable.”

¹⁵ See *ibid.*, 63n18.

¹⁶ We can conceive of a person who is skeptical about a particular area of knowledge (for instance, moral knowledge), but not others (e.g. scientific knowledge). See also the more radical case of Hobbes, for whom even scientific knowledge is not absolute: Andrew R. Murphy, “Tolerance, Toleration, and the Liberal Tradition,” *Polity* 29, no. 4 (1997): 605–8.

include strong feelings of dislike and disgust, then the moral skeptic can be said to be tolerating those he feels mistaken in strongly insisting on their particular moral views, or the idea of morality itself.¹⁷ Yet is sufficient for my purposes that toleration neither necessarily implies nor presupposes moral skepticism, though it may be hospitable to it.¹⁸

We are now led to the issue of whether toleration properly applies to that which one finds *morally* objectionable, or also includes what one has a mere dislike of. The worry is a familiar one, and finds expression in the so called “paradox of the tolerant racist”: the archetypical racist has feelings of prejudice towards some racial or ethnic group, but does not have a reasoned (or perhaps has an incoherent) account of such prejudice.¹⁹ If we accept that mere dislike counts as relevant cases of toleration, then so long as the racist refrains from interfering in the said group’s activities, he is said to be tolerant. Worst still, the stronger his dislike and hatred, by this line of reasoning we are forced to concede, the more tolerant he is.

What we ought to concede regardless, is that feelings of prejudice can be both strong and deep seated, sometimes even more so than the conception of morality that holds sway over us. Forst has thus attempted to distinguish between legitimate and illegitimate cases of toleration: while cases of moral objection are

¹⁷ I believe such skeptics are rare, and though I do not have a strongly argued conclusion, indifference seems to be far more likely than indignation of some sort.

¹⁸ See Shklar, “The Liberalism of Fear,” 22, 25.

¹⁹ Mendus, *Toleration and the Limits of Liberalism*, 10–12; John Horton, “Toleration as a Virtue,” in *Toleration: An Elusive Virtue*, ed. David Heyd (Princeton, NJ: Princeton University Press, 1996), 30–32; Ten, “A Conception of Toleration,” 2–3.

legitimate cases of toleration, racism, sexism, and all other kinds of prejudicial dislike are not. Rather, the latter are feelings which we ought to do away with; thus the racist cannot properly be said to be tolerant. Whether this distinction can be sustained is beyond the scope of my essay, and I want to limit myself to considerations of toleration of what we find morally objectionable. Indeed, it may often be the case that our strong dislike of some particular practice or belief is due to some strong moral conviction we have.

On the other end of the spectrum, value pluralism in its many varieties is also conceptually distinct from toleration. A value pluralist believes that there is a diversity of values, some that are mutually incompatible. Thus to instantiate some would mean we are not able to instantiate others.²⁰ The value pluralist will acknowledge that even the values which are incompatible with ours are in some sense intrinsically valuable. Yet toleration in the strict sense requires us to find some belief, practice or value objectionable, and if so, does not properly apply to someone who refrains from interfering out of the belief that something is valuable, or should be promoted.

While value pluralism, moral skepticism, and moral indifference are thus not toleration, they may still be allies of toleration, in that they may together better procure peaceable social relations. To briefly mention, according to Bernard Williams, skepticism is one of the attitudes that can support the “practice

²⁰ Joseph Raz, “Autonomy, Toleration, and the Harm Principle,” in *Justifying Toleration: Conceptual and Historical Perspectives*, ed. Susan Mendus, 1 edition (Cambridge University Press, 2009). Consider also Mill in *On Liberty*: “Pagan self-assertion is one of the elements of human worth, as well as Christian self-denial.”

of toleration”, understood simply as one group putting up with the existence of another. Likewise, indifference may provide the only solution to some religious disputes, as in the case of Europe.²¹ That these attitudes support a tolerant society is by no means guaranteed, and one commentator has pointed out that skepticism can in principle lead to intolerance instead.²² Further elaboration on this is beyond the scope of my essay; I simply note that toleration is not identical to the three attitudes discussed, and furthermore, requires a stronger theoretical basis.

A corollary of 1) concerns the perceived ability to interfere: to be able to actively interfere with the expression of opinions and / or conduct assumes that one is in the position to exercise such coercive force, whether directly or indirectly. Mendus, Brown, and others have noted that toleration only properly describes the group in power. According to them, the weaker group cannot be said to tolerate the stronger, as their non-interference is due to their lack of power to do so. However, as Forst has argued rightly, this is not necessarily the case: the weaker group can still be said to be tolerant to the extent that they will not interfere with the other’s practices if and when they become the stronger group.²³ Coercion can take many forms apart from the ones familiar to us, namely a dominant group in society who has control of the state’s lawmaking powers utilizing it to pass laws against what it considers to be immoral. Apart from

²¹ Bernard Williams, “Toleration: An Impossible Virtue?,” in *Toleration: An Elusive Virtue*, ed. David Heyd (Princeton, NJ: Princeton University Press, 1996), 20–21.

²² Shklar, “The Liberalism of Fear,” 25.

²³ Forst, *Toleration in Conflict*, 25–26.

legislation, coercion can also take the form of social sanctions that interfere with the expression of certain views, or the conduct of certain activities.

Thus understood, the negation of toleration is intolerance, that is, active interference for the sake of prohibiting the practices and / or beliefs that one deems objectionable. In the political context, this involves the coercive use of state force, or legislation, to prevent certain points of view from being expressed, or to prevent people from conducting themselves in certain ways. I am principally concerned with this political practice of toleration. However, the argument for toleration is not only addressed to state actors, it is as much addressed to individual citizens who are expected to pledge allegiance to such a state.

Is toleration a good thing?

Separate from the question of whether toleration is an intrinsic or an instrumental good, is how it can be a good thing. I take it as a given that from our collective memory and experience of human history, we acknowledge sectarian conflict to be one cause of great human misery. Although violent conflicts have many causes and motivations, and may also involve national or ethnic divisions, religious strife remains a significant contributor, and has the potential to exacerbate other already existing tensions. Toleration that is effectively action guiding can help to mitigate existing religious strife, and depending on the kind of toleration secured, it can also secure conditions for the mutual coexistence of people with vastly differing moral convictions (some mutually exclusive). Beyond the baseline of peaceful coexistence, Scheffler highlights the fraternity that one can have with his fellows as one important good of toleration. The rewards

associated with a way of life characterized by toleration include the sense of enrichment that comes from developing an appreciation for forms of value realized in the practices of others, and the exhilaration of living confidently amidst the whirl of human diversity.²⁴ According to Scheffler the bonds of fraternity, like the bonds of love and friendship, can hold among people who are in various respects critical of each other.

But despite its perceived good, toleration is widely acknowledged to be something difficult, if not close to impossible. Bernard Williams puts it memorably when he said that toleration is most necessary when it comes to the intolerable.²⁵ In the same article discussing the good of toleration, Scheffler notes that some people who are subject to the regime of toleration continue to find it threatening, because it asks us to acknowledge what we have in common with those who are different, that the most toxic forms of intolerance almost always involve ideas of purity and a denial of this commonality.²⁶ We often need not look as far as the Holocaust for such examples, merely reflecting on the worst days in our own lives can be sufficient. Whether the actual practice of toleration by individuals comes at too high a doctrinal and / or psychological cost is beyond the scope of my discussion. Rather, the concern I want to pursue is this: can we provide an argument that reasonably explains why individuals, when faced with conduct and expression they deeply disagree with, should tolerate instead of

²⁴ Samuel Scheffler, "The Good of Toleration," in *Equality and Tradition: Questions of Value in Moral and Political Theory*, 1 edition (New York; Oxford: Oxford University Press, 2012), 333.

²⁵ Williams, "Toleration: An Impossible Virtue?," 18–19.

²⁶ Scheffler, "The Good of Toleration," 333.

interfere with said behavior? How can such an argument be made appealing to people with strong and differing moral convictions?

Toleration, a brief taxonomy

Arguments for Toleration can be classed into two broad categories, *principled* and *pragmatic*. A Principled argument specifies and relies on a normative principle that when worked out, provides a response to the “why” question. In addition to the latter question, it also answers a second concern about where the limits of toleration lie, at least in part. One example is the still influential argument for toleration that relies on John Stuart Mill’s “harm principle”: the sole end which warrants interfering with the liberty of an individual is the prevention of harm to others, and in matters which merely concern himself, the individual is sovereign.²⁷ Thus, in “the permanent interests of man as a progressive being”, one ought to tolerate expressions of opinions and ways of living one considers to be morally objectionable or untrue²⁸, and one rightfully stops tolerating when such expression or conduct harms others.²⁹ To the extent that principled arguments for toleration begin from strongly held moral principles, they can make strong and persuasive cases for toleration.

On the other hand, pragmatic arguments for toleration appeal to the self-interest of the tolerating parties, without requiring any further reference to normative principles. The general answer provided by pragmatic arguments to the

²⁷ John Stuart Mill, “On Liberty,” in *The Basic Writings of John Stuart Mill: On Liberty, the Subjection of Women and Utilitarianism*, 2002nd ed. edition (New York; London: Modern Library, 2002), 11–12.

²⁸ *Ibid.*, 13.

²⁹ See Cohen, *Toleration*, 34–54.

question “why tolerate?” is that intolerance is very likely to lead to further discord and conflict, and that peace is preferable to the latter by far. Thus, it is in the rational self-interest of the groups involved to tolerate each other for the sake of peace, given the current balance of interests and power. Pragmatic considerations are the most significant in *modus vivendi* type situations: in the sixteenth century, the warring Catholics and Protestants agreed to tolerate each other only as a kind of temporary armistice, their relative equality in strength making it such that the costs of continuing to fight far outweigh the benefits. However, should either party become dominant, it would impose its own religious doctrine as the sole admissible faith.³⁰ Depending on the prevailing balance of power and interests, as well as social circumstances, such an argument for toleration can have strong and immediate appeal.³¹

However, pragmatic considerations are subject to changing historical and social circumstances, and to that extent, the toleration that results from such considerations tends not to be enduring should pragmatic concerns be the only basis of toleration. Pragmatic arguments are also weak in situations where the parties involved are not roughly equal in strength and political influence: in the extreme case involving one dominant party, it is far too tempting for the stronger party to simply not tolerate the weaker should it disagree with its practices and beliefs, not to mention complete elimination of the other(s). Furthermore, it is also not clear that pragmatic considerations necessarily and clearly lead to toleration.

³⁰ Rawls, *Political Liberalism*, 459.

³¹ The obvious case is that of Europe that was tired out by the religious wars of the 16th and 17th centuries.

As C.L. Ten notes, if the aim of toleration is simply to secure peace and to avoid group conflicts, these aims can sometimes be achieved by persecuting the weaker group, or individuals within groups.³² Given the weight of other considerations, for example the desire of a certain group to assert what they take to be the true religion, and the comparative ease at which such alternative courses of action can be carried out by the stronger group, toleration can often seem too costly. While pragmatic considerations and the corresponding arguments for toleration have been historically important and continue to be so, if one wants a more stable and enduring basis for toleration, a principled argument is a better candidate by far. The greater part of my discussion will thus be focused on defending a principled argument for toleration.

Principled arguments can be further distinguished into *comprehensive* and *political* kinds, following Rawls in *Political Liberalism*. I take a comprehensive argument for toleration to be one that presupposes a part (or many parts) of a comprehensive doctrine, defined as a more or less consistent and coherent account of values that aim to cover all aspects of human life. A comprehensive doctrine can be either philosophical or religious³³: Christianity, and Mill's philosophy both specify ideas of the ultimate good, and rest on claims about the essence of human nature.³⁴ Some construals of Mill's and Locke's arguments for toleration rightly

³² Chin Liew Ten, "Religious Diversity, Toleration, and Interaction," in *Religious Diversity in Singapore*, ed. Lai Ah Eng (Institute of Southeast Asian Studies, 2008), 564.

³³ Rawls, *Political Liberalism*, 13.

³⁴ See Mill, "On Liberty," 61–66; Compare *Catechism of the Catholic Church 2nd Edition* (Doubleday, 1995), 17: "The desire for God is written in the human heart, because man is created by God and for God; and God never ceases to draw man to himself. Only in God will he find the truth and happiness he never stops searching for..."

place them within the “comprehensive” camp.³⁵ Consider one of the arguments made by Locke in his *Letter on Toleration*:

“Every mortal has an immortal soul, capable of eternal happiness or eternal misery, whose salvation depends upon whether in this life each person has done the actions and held the beliefs that are necessary to win the Deity’s favour and which God has prescribed...It follows...that each individual alone is responsible for their own salvation; for a person in no way violates the right of others by practising an erroneous ritual, nor does he do them an injury by not sharing their correct beliefs on divine matters, nor does his damnation diminish their happy state. I do not mean by this to exclude all friendly advice and willingness to refute errors; these are very much Christian duties. Anyone may devote as much reasoning and exhortation as he pleases to another’s salvation, but there must be no violence and no compulsion, and nothing should be done in this context for the sake of control over others.”³⁶

Regardless of our assessment of the strength of this argument, it is clear that Locke reasons from what he takes to be the Christian view about the soul and the conditions that lead to eternal life, to the conclusion of toleration: if each individual is ultimately only responsible for his / her salvation and eternal

³⁵ Consider the argument against this view in Robert Amdur, “Rawls’s Critique of On Liberty,” in *Mill’s On Liberty: A Critical Guide*, ed. C. L. Ten, 1 edition (Cambridge, UK; New York: Cambridge University Press, 2009), 118–22. Though I will not address this at length, one can imagine that it is possible for some of Mill’s and Locke’s arguments to be suitably adapted to political liberalism.

³⁶ Locke, *Locke on Toleration*, 31–32.

happiness, then it does not matter if others have false beliefs or practices. But just as there are religious believers who reject the possibility of moral progress independent of belief in God, there are also non-believers who reject the immortality of the soul and the conditions of salvation from which the conclusion of toleration is drawn. It is clear that comprehensive arguments can have immediate and strong appeal to adherents of the comprehensive doctrines they derive their normative principles from, but can have little or no hold on those who reject those comprehensive doctrines. In modern society, it is taken for granted that citizens adhere to a variety of comprehensive doctrines. Even though there may be one comprehensive doctrine that has larger proportion of adherents, society is not homogenous enough for us to take only that doctrine into account. Moreover, the complexity of modern life means that more often than not we do participate in a political society that goes beyond our membership in communities united by doctrinal agreements. It is then not sufficient for us to only offer comprehensive arguments for toleration, however influential they are historically (and continue to be) for adherents of particular faiths.³⁷

On the other hand, a political argument for toleration does not necessarily presuppose any particular comprehensive doctrine. Instead, it attempts to begin from widely shared political values, whether publicly expressed in actual political life, or implicit in the way citizens relate to each other as citizens. For Rawls, as far as possible, a political conception of justice does not make or rely on

³⁷ Comprehensive arguments can still play an important role in supporting toleration. Also, for Rawls and many others, Christianity has been historically important for the development of liberalism.

controversial religious or philosophical claims. In terms of scope, a political conception limits itself to matters of basic justice and the framework that makes social cooperation possible, and makes no claims about the ultimate good. Of course, as a moral and substantive conception, it cannot be neutral about the good when it comes to all aspects of political justice. What makes a conception sufficiently “political” is that whatever concepts it utilizes (of the good or otherwise), they must have independent bases in widely shared political values. It must also be sufficiently “thin”, so as not to conflict with the variety of comprehensive doctrines that are held by individuals. A political argument for toleration, in the sense discussed, likewise avoids appealing to comprehensive doctrines, but is compatible with them. It seeks to base toleration on a value (or a family of related values) that are broadly shared by in political life.

Just as there must be limits to the idea of toleration if it is to make any sense, particular conceptions of toleration must also be able to specify limits of toleration in order for them to be of any conceptual help at all. Common sense and ordinary human experience both tell us that there are some things one ought not tolerate, thus if a particular conception of toleration is to be a good one, we should be able to show that it is consistent with our intuitions of where those limits lie, at least in clear cut cases. We may not always be able to do so in a clear and precise manner; indeed, even in the case of Mill’s harm principle, it may be necessary to further clarify the sense of harm to yield limits that are practically implementable.

The fact of reasonable pluralism and desiderata

Until this point, I have provided an analysis of the concept of toleration, but little has been said about its content. To answer the question of why and how one ought to tolerate, it is not enough for one to merely analyze the concept but in addition, develop it into particular conceptions.³⁸ In this sense toleration is well-trodden ground in the history of political philosophy³⁹. If the conceptual analysis of toleration is relatively non-controversial, specific conceptions of toleration with their normative (or pragmatic) assumptions prove to be far more difficult to evaluate vis-à-vis each other. Given the scope of my paper, it would not be possible, or even fruitful to conduct such an evaluation. Rather, I want to focus on identifying one background condition of political life that in my opinion an argument for toleration needs to assume, and given this background condition, what would be the desiderata of a suitable candidate. The background condition I have in mind is what Rawls calls “the fact of reasonable pluralism”.⁴⁰ As I understand it, this means that in the absence of suppression and control (and perhaps even in their presence), there exists (and will exist) a plurality of comprehensive doctrines, some of them mutually exclusive and opposed to each other. This is partly the outcome of free institutions and the ordinary (and correct) exercise of human reason, and partly the complexity of the issues and judgments involved. This state of affairs will continue to persist, and in a sense, has always existed. For some this is a fact that is regrettable: the existence of heterodoxy and

³⁸ Rawls, *A Theory of Justice*, 9.

³⁹ Forst, *Toleration in Conflict*, 26–35.

⁴⁰ Rawls, *Political Liberalism*, 36–37.

heresy for instance, is a cause of concern for many religious believers, and something to be actively combated. Some others, with a Platonic conception of reason and truth may assert that with conscientious effort, the perfection and correct exercise of human reason will in time lead us to a single answer concerning the good.

However for us, given the fact of reasonable pluralism, if an argument for toleration is to have broad appeal, it should be both principled and political in scope. It should not appeal to values or reasons that are part of a comprehensive doctrine, as it would be both unfair and unable to garner widespread support should it need to do so. In the next chapter, I develop a Rawlsian conception of toleration that I believe can meet these desiderata.

2. A Rawlsian conception of toleration

Introduction

Is it possible to elaborate a conception of toleration that does not rest on controversial values? Can an account of toleration give moral convictions that lay claim to objective truth its proper due? In this chapter, I will argue that one plausible candidate which can answer our demands takes as its starting point what Rawls terms the “burdens of judgment”.⁴¹ I will begin by making some remarks to situate the account of toleration in its proper context before providing a detailed exposition of it. My primary goal is to explain why I find that Rawls’ argument from the burdens of judgment presents a compelling case for the toleration of what he calls “reasonable comprehensive doctrines”. I argue that if we accept that the burdens of judgment apply to ourselves as well as to other fellow citizens, we have a sufficiently strong *prima facie* reason to tolerate others, even if we think them acting in a way that we deem morally wrong. Finally, the notions of reciprocity, reasonableness, and mutual respect play an important role in Rawls’ argument, and I will conclude with how these other concepts specify the limits of toleration and complete his liberal account of political toleration. I note at the outset that it is out of the scope of this paper to consider these ideas in greater detail individually, and also how they fit together and support a coherent political

⁴¹ See John Rawls, *Political Liberalism* (New York: Columbia University Press, 2005), 54–63. I believe it is coherent to speak in such a manner: “...not everyone agrees with assisted suicide, but people might agree that one has the right to it, even if they’re not themselves going to exercise it”. The pronouncement attributed (whether rightly or wrongly) to Voltaire expresses a similar idea: “I disapprove of what you say, but I will defend to the death your right to say it.” What I offer is perhaps one possible explanation of why we find these to be coherent.

conception of liberalism. Rather I hope to show that, though it may seem inevitable that the appeal of toleration thus understood will be limited to those who accept the public political culture of a liberal society, further consideration of the ideas implied in the argument show that they are moral concepts which are (possibly) more broadly shared.

To briefly restate my problem: the argument for toleration is addressed (potentially) to persons with strong and abiding religious and philosophical convictions. Convinced of their objective truth (and moral rightness), why should they not instead attempt to outlaw practices and behaviors entailed by their convictions to be morally wrong? Furthermore, because they hold that their convictions are objectively true, arguments which presuppose (or imply) moral relativism and skepticism will not be convincing to them. To do the work we require of it, an account of toleration thus has to 1) be compatible with the possibility of objective moral truth, and 2) give strong reason(s) why and how it can override our particular moral and religious convictions in such a way that makes toleration a possibility.

Toleration in Rawls' political liberalism

It is noteworthy that Rawls himself characterizes the project he pursues in *Political Liberalism* as being concerned with toleration in an explicit way. He enjoins the “first fundamental question”, that of the most appropriate conception of justice for specifying fair terms of social cooperation between free and equal citizens, with a second, regarding “the grounds of toleration...given the fact of

reasonable pluralism as the inevitable outcome of free institutions”.⁴² Rawls further claims that “...political liberalism applies the principle of toleration to philosophy itself” in formulating a conception of justice which is independent of comprehensive philosophical and religious doctrines that are potentially incompatible with each other.⁴³ Although it is in this sense “freestanding”, it can be the subject of an “overlapping consensus”, affirmed with reasons drawn from within strongly held moral and religious convictions.

In order that it fulfill these demands, political liberalism cannot itself be based on a “comprehensive” conception of liberalism, or on an ultimately controversial and “thick” idea of say, the good of individualism or secularism. If so, it will be indistinguishable from the confessional states of old: the neutrality and impartiality of political liberalism will turn out to be nothing more than a thinly veiled argument which presupposes and favors one particular non-religious comprehensive doctrine. From a normative point of view, such an endeavor would be unfair and violate the “criterion of reciprocity”. Instead, Rawls distinguishes between “political” and “comprehensive” liberalism. This distinction is primarily one of scope: political liberalism does not seek to specify the values which apply across all areas of human life, only those relating to the political domain, found in the public political culture of a liberal democratic state.⁴⁴

⁴² Ibid., 47.

⁴³ Ibid., 10.

⁴⁴ I will pick up the latter issue in greater detail towards the end of this chapter, specifically regarding whether this limits its appeal to non or less liberal peoples.

Furthermore, there will be intractable and serious problems if the terms of social cooperation require a society to be united on a particular comprehensive conception of the good, even if this conception is a liberal one. To achieve social unity based on all citizens affirming a single comprehensive conception will always and without exception⁴⁵ require the oppressive use of force. Thus Rawls rules out the “liberalisms of Kant and Mill”⁴⁶, and even his own *Theory of Justice* as suitable candidates for a political conception of justice. Such a conception is his aim in recasting his own theory, and political toleration has to be grounded on terms which all citizens can accept and understand independently of their particular comprehensive views. I now consider one important element in such a conception of toleration, what Rawls calls the “burdens of judgment”.⁴⁷

The burdens of judgment

Asks Rawls, “why does our sincere and conscientious attempt to reason with one another fail to lead us to agreement?” In particular, disagreement concerning the ultimate good is a pervasive fact of almost any society, let alone modern societies in which may different religious and moral doctrines exist side by side: even in a country where the majority of citizens are of one faith, there will inevitably be dissenters, both within and outside the faith. For Rawls, the burdens of judgment are features of human reasoning that can explain why

⁴⁵ Ibid., 37–38, n39.

⁴⁶ Ibid., 199–200; See also Isaiah Berlin, “John Stuart Mill and the Ends of Life,” in *Liberty: Incorporating Four Essays on Liberty*, ed. Henry Hardy, 2nd edition (Oxford: Oxford University Press, 2002). As previously mentioned, this is not to say that elements or parts of Kant and Mill’s philosophy cannot make up a plausible account of toleration which satisfies our demands.

⁴⁷ Also called “burdens of reason” elsewhere: cf. John Rawls, “The Domain of the Political and Overlapping Consensus,” in *Collected Papers*, ed. Samuel Freeman, Revised ed. edition (Harvard University Press, 2001), 475–78.

reasonable disagreement exists. In other words, even in the best case scenario of exercising their intellectual and moral powers sincerely and conscientiously, the tendency is for people to come to differing conclusions on questions of the true religion or the best way of life. It is important here to distinguish between reasonable and unreasonable varieties of moral disagreement. Consider the following passage from *A Theory of Justice*:

I also suppose that men suffer from various shortcomings of knowledge, thought, and judgment. Their knowledge is necessarily incomplete, their powers of reasoning, memory, and attention are always limited, and their judgment is likely to be distorted by anxiety, bias, and a preoccupation with their own affairs. Some of these defects spring from moral faults, from selfishness and negligence; **but to a large degree, they are simply part of men's natural situation. As a consequence individuals not only have different plans of life but there exists a diversity of philosophical and religious belief, and of political and social doctrines.**⁴⁸ (emphasis mine)

Rawls does not deny that unreasonable disagreement exists, namely due to bias, self-interest, and moral blindness.⁴⁹ Yet the paradigm case of moral disagreement which demands explanation is that in which parties involved are sincere and have exercised their intellectual and moral powers conscientiously. How is it then, that instead of all roads of moral enquiry "leading to Rome", reasonable people come

⁴⁸ John Rawls, *A Theory of Justice* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1999), 110.

⁴⁹ Rawls, *Political Liberalism*, 58.

to hold different (and sometimes mutually incompatible) views regarding religious and moral truth? “Obstacles to the correct and conscientious exercise of our powers of reason and judgment in the ordinary course of social life”⁵⁰, the burdens of judgment apply to all our theoretical, practical and moral judgments:

“a) The evidence—empirical and scientific—bearing on the case is conflicting and complex, and thus hard to assess and evaluate. b) Even where we agree fully about the kinds of considerations that are relevant, we may disagree about their weight, and so arrive at different judgments. c) To some extent all our concepts, and not only moral and political concepts, are vague and subject to hard cases; and this indeterminacy means that we must rely on judgment and interpretation (and on judgments about interpretations) within some range (not sharply specifiable) where reasonable persons may differ. d) To some extent (how great we cannot tell) the way we assess evidence and weigh moral and political values is shaped by our total experience, our whole course of life up to now; and our total experiences must always differ. Thus, in a modern society with its numerous offices and positions, its various divisions of labor, its many social groups and their ethnic variety, citizens’ total experiences are disparate enough for their judgments to diverge, at least to some degree, on many if not most cases of any significant complexity. e.) Often there are different kinds of normative considerations of different force on both sides of an issue and it is difficult to make an

⁵⁰ Ibid., 56.

overall assessment. f) any system of social institutions is limited in the values it can admit so that some selection must be made from the full range of moral and political values that might be realized. This is because any system of institutions has, as it were, a limited social space. In being forced to select among cherished values, or when we hold to several and must restrict each in view of the requirements of the others, we face great difficulties in setting priorities and making adjustments. Many hard decisions may seem to have no clear answer.”⁵¹

Since we cannot eliminate these burdens, pluralism – the existence of a variety of religious and philosophical views - is a permanent fact of political life, even in the best case scenario of sincere and conscientious individuals seeking answers to the questions of religious and moral truth. Thus, “conflicts arising from the burdens of judgment always exist and limit the extent of possible agreement.”⁵² A few commentators have noted that d) seems to be the most important, and it is not difficult to see why: certain insights we come to have about life (and some of that are relevant to moral judgment) are gleaned because of things in life we have experienced. Some of these experiences give rise to judgments which become the fixed points of our moral convictions, in ways that are impossible to predict or even perceive.⁵³ These do not necessarily have to be exclusively emotional or

⁵¹ Ibid., 56–57.

⁵² John Rawls and Samuel Richard Freeman, *Collected Papers* (Cambridge, Mass.: Harvard University Press, 2001), 613.

⁵³ Consider John Rawls, “On My Religion,” in *A Brief Inquiry into the Meaning of Sin and Faith: With “On My Religion,”* ed. Thomas Nagel (Cambridge, Mass.; London: Harvard University Press, 2010), the account Rawls gives about how he lost his Christian faith. It is also not inconceivable that having had similar experiences, one can take a very different direction than he did.

irrational in nature. Affirming d) is also not to deny that we can have similar experiences, but to acknowledge that how we arrive at our more comprehensive views and moral judgments is partly a function of our total life experiences, which are never the same in its entirety. It also seems that the burdens as described impose limits to the (sincere and conscientious) attempts to rationally persuade others of the truth of moral and religious doctrines. We may each be strongly convinced of our own comprehensive doctrine, yet not be able to even partially convince another person who is able and willing to be rationally persuaded.

Importantly, the burdens of judgment do not (directly or indirectly) presuppose or lead to epistemological skepticism, which following Rawls is the view that "...we cannot know those objects (of knowledge) because one or more of the necessary conditions of knowledge can never be satisfied."⁵⁴ If it did presuppose the latter, it would itself rest on controversial assumptions, which very likely will be contested by others holding different doctrinal beliefs. In much the same way, the argument does not necessarily lead to the conclusion that moral knowledge is impossible, and is compatible with the possibility of objective moral and religious truth, of a comprehensive nature, points I will return to later.

According to Rawls, the burdens of judgment are a natural feature of our common human reason: they apply to the free use of our practical (and theoretical) reason within the framework of free political institutions.⁵⁵ Thus, to hate the fact of reasonable pluralism and the diversity it implies is to "hate human

⁵⁴ Rawls, *Political Liberalism*, 63.

⁵⁵ *Ibid.*, 56.

nature, for it is to hate the many not unreasonable expressions of human nature that develop under free institutions.”⁵⁶ It is incorrect to ask if these burdens are too much to bear; we necessarily bear them in any and every act of everyday human reasoning. Thus the “burdens of judgment” have profound implications not just for the way we apply moral criteria in judging moral phenomenon, but also the adoption of those very criteria themselves.

In summary, we began with noting that a suitable argument for toleration has to take seriously the possibility of truth (religious, theoretical, moral, among others), and also not itself be based on any single comprehensive conception of the good. The above discussion has made clear the following: firstly, the burdens do not presuppose or imply epistemological skepticism; they are compatible with the possibility of objective moral and religious truth. Secondly, the burdens of judgment are features of our common human reason, applying to its normal, conscientious and sincere exercise – they apply to us regardless of the particular comprehensive doctrines we happen to hold. Accepting the burdens of judgment also does not depend on accepting any particular comprehensive doctrine. Hence, the above considerations show that an argument for toleration based on the burdens of judgment is at least provisionally suitable, when such an argument is potentially addressed to those who each claim objective truth for their own conception of the good, and whose conceptions are mutually incompatible. In the

⁵⁶ Rawls and Freeman, *Collected Papers*, 479.

following discussion, I will complete the argument with other related concepts found in Rawls' *Political Liberalism*.

An argument for toleration from the burdens of judgment

If one accepts that the burdens of judgment applies to all citizens (including oneself), an argument for toleration begins to take shape:

- 1) The burdens of judgment apply to all instances of human reasoning under normal conditions.
- 2) If 1), then even in the best case scenario of (exercising one's powers of reasoning conscientiously and sincerely), different people can (and very likely will) arrive at different conclusions regarding the ultimate questions of value, religious and moral truth.
- 3) (1, 2) Even in the best case scenario, people may (and very likely will) come to different conclusions regarding the ultimate questions of value, religious and moral truth. (*fact of reasonable pluralism*)
- 4) (3) If there exists a true comprehensive conception of the good, it can be reasonably rejected by others who have exercised their powers of reasoning conscientiously and sincerely.

(4) is entailed by the discussion in the preceding section detailing (1) – (3): consider the case in which an individual has conscientiously exercised his powers of theoretical and practical reason, and sincerely believes that he /she has arrived at the true conception of the good. Assume for the sake of argument that it this in

fact true, not merely sincerely held to be true. However even in this case, which is the best case scenario, others who are similarly sincere and conscientious may not come to the same conclusion, due to the burdens of judgment. They may hence come to *reasonably* reject what is the true conception of the good.⁵⁷ Yet it is not obvious that (4) directly implies the conclusion we sought, that we ought to tolerate others. In order to complete the account of toleration, a bridging premise (5) is required. This is what makes Rawls' account of toleration ultimately a *liberal* one.

5) It is unfair (unreasonable) to impose through coercive force what can be reasonably rejected. Citizens owe each other a moral duty of fairness, specified in terms of mutual respect and reciprocity. (*liberal principle of legitimacy*).

6) (4, 5) To coercively interfere in order to enforce a particular comprehensive conception of the good, even if it is true, is unfair (unreasonable)

7) (6) We ought to (mutually) tolerate different conceptions of ultimate value, even if we think them to be mistaken or morally wrong.

The notion of reasonableness in 5) requires further exposition. There is both a descriptive and normative dimension to reasonableness. The descriptive dimension specifies reasonableness in terms of reasoning capabilities: powers of thought and judgment, the ability to draw inferences, weigh evidence, and balance

⁵⁷ Once again, unreasonable disagreements are always a possibility.

competing considerations.⁵⁸ To be unreasonable in this sense is to fail to exercise those capabilities conscientiously, and / or to recognize that the burdens of judgment apply to our judgments as well as those of others, hence limiting our ability to come to the same conclusions on theoretical as well as practical matters. The normative dimension is found in Rawls' distinction between the reasonable and the rational: while the rational aspect concerns the choosing, ordering and pursuit of the ends of life, the reasonable aspect consists of the ability and willingness to honor fair terms of social cooperation among equals, provided others can be reasonably expected to do likewise.⁵⁹ To be unreasonable in this sense is to be unwilling to honor, or even to propose, "except as a necessary public pretense", any general principles or standards for specifying fair terms when taking part in cooperative schemes, and are ready to violate such terms as suits their interests when circumstances allow.⁶⁰ While reasonableness admits of varying degrees, a certain minimum threshold is all that is sufficient for the Rawlsian argument to work, and anyone with a normally functioning sense of justice can meet this threshold.⁶¹

5) completes the argument by introducing the liberal political context and institutional identity of a citizen within a liberal state. The argument is ultimately *moral* (as opposed to legal)⁶² in character, since the exercise of political and lawmaking powers must themselves be answerable to the principle, and not the

⁵⁸ Rawls, *Political Liberalism*, 55.

⁵⁹ Ibid., 48–54.

⁶⁰ Ibid., 50.

⁶¹ See John Rawls, "The Sense of Justice," in *Collected Papers*, ed. Samuel Freeman, Revised ed. edition (Harvard University Press, 2001), 96–116.

⁶² Rawls, *Political Liberalism*, 147–48.

other way round. Rawls tries to sidestep the problem of controversial and comprehensive moral doctrines in a twofold manner: in terms of scope, he restricts his conception of liberalism to the political domain, to what he calls the basic structure or constitutional essentials.⁶³ In terms of the affirmation or denial of any particular religious or philosophical doctrine, his political liberalism remains agnostic about their truth, and aims not to appeal to controversial values. It also follows that the common resources of the state ought not be used to support or suppress any particular comprehensive doctrine, at least insofar as they are reasonable.⁶⁴

Some things may worry us at this point. 5), which is necessary for us to come to the conclusion we want, requires us to acknowledge that citizens have a moral duty of fairness, specified in terms of reciprocity and mutual respect (at the very least). These are substantive *political* principles, and in order for them to have widespread assent, they must be specified in terms all citizens can be reasonably expected to endorse. As we have seen, one sure way to fail this requirement is for these principles necessarily depend on a particular comprehensive and controversial conception of the good. Can we avoid deriving

⁶³ Ibid., 442–43.

⁶⁴ Interestingly, Rawls himself seems to exercise restraint even in his discussion of religious doctrines and controversial issues: he pursues what he calls a “method of avoidance”. Consider *ibid.*, 138: “Here it is important to stress that this reply does not say, for example, that the doctrine *extra ecclesiam nulla salus* is not true. Rather, it says that those who want to use the public’s political power to enforce it are being unreasonable (II:3). That does not mean that what they believe is false. A reply from within a comprehensive view—the kind of reply we should like to avoid in political discussion—would say that the doctrine in question is a misapprehension of the divine nature, and hence not true.”

the principles of political right from a particular comprehensive conception (whether liberal or not), or is it unavoidable?

A positive answer then depends on our being able to understand and accept the principles of reciprocity and mutual respect in a suitably impartial way, on terms that are broadly shared. In the following section, I argue that there are good reasons for us to think that the conception of toleration just elaborated can have the broad appeal we are seeking.⁶⁵ I try to set the groundwork by first discussing the special domain of the political, and the political identity of a citizen.

The Political domain and political identity of citizens

If the burdens of judgment apply so broadly to all areas of human reasoning, what makes us think that individuals will not likewise disagree about constitutional essentials, especially the basis of toleration itself? As Rawls asks, “...how can we affirm our comprehensive doctrine and yet hold that it would not be reasonable to use state power to gain everyone’s allegiance to it?” What makes us think that *political* values, the ones that ground toleration, can normally outweigh other values that conflict with them? The answer depends partly on

⁶⁵ Consider Salman Rushdie, in *Boundaries of Toleration*, ed. Alfred Stepan and Charles Taylor, 3 edition (New York: Columbia University Press, 2014), 30: “...Well, to put it in nontheoretical terms, the desire of human beings to get along with each other is not culturally specific. The desire of human beings to be able to put up with their neighbors, even if they play the radio too loud or pick their noses, is something which, in the end, we all kind of feel. I think we try to get along with each other, and I feel that’s a thing that does not have to do with culture. It’s a thing that we have to do every day; we try to get along with people next-door even if they’re not like us. All this is sort of elevating that to a much grander scale. I do think there is a perfectly nonculturally specific idea of tolerance which can be used in this context.”

recognizing certain features of the political domain, as well as acknowledging the shared political identity of a citizen.

Firstly, Rawls distinguishes between non-voluntary and voluntary associations, of which the political belongs to the former. One enters the political association by birth and exits only by death – we “come to be within it”, having no prior political or non-political identity.⁶⁶ Making a concession for the possibility of emigration (which Rawls assumes away), it is still extremely difficult for us to leave political society, in a way that voluntary associations are not.⁶⁷ Next, political power is necessarily coercive power backed by the government’s use of sanctions and regularly imposed on all citizens, some of whom may not accept the stated rationale for their exercise.⁶⁸ Because of the coercive nature of the laws (as well as other powers exercised by the state) and the fact that they are meant to apply generally, an arbitrary or biased application of these powers under normal conditions not only offends our sense of justice, but is oppressive. Together these two considerations explain why the political domain is distinct and special: to treat it in the same way we treat a religious association is to disregard important differences between them.

Lastly, we can distinguish our institutional identity⁶⁹ from our non-political identity. While in many cases persons mostly identify with the latter - it

⁶⁶ Rawls, *Political Liberalism*, 135–36.

⁶⁷ One may ask: what about traditional societies, it is equally if not more difficult to leave a religion (community)? This is an interesting question to which I will not attempt to give a further answer, except to highlight our context of modern political societies, of which the relative ease of leaving a voluntary association is a fairly accurate description.

⁶⁸ Rawls, *Political Liberalism*, 136.

⁶⁹ I use the terms “institutional identity” and “political identity” interchangeably.

being the locus of their idea of a good life and ultimate value, we nevertheless can sensibly speak of each of us as having an independent political identity as citizens. Rawls acknowledges that our allegiance to our comprehensive doctrines can be strong and uncompromising, but a change in our comprehensive doctrines does not necessarily imply a change in our institutional identity: on the road to Damascus Saul of Tarsus becomes Paul the Apostle⁷⁰, but despite this he remains a Roman citizen. As citizens qua citizens, we have a political identity that is independent and irreducible to our non-political identities. This is not to say that they are not related – they may in fact be mutually reinforcing or sometimes in conflict – but merely that they are distinct.

If the character of political life is non-voluntary and concerns how coercive force is used legitimately, and if we can in addition make sense of the institutional identity of a citizen, how can these help us in providing an answer to our initial question? According to Rawls, political values are “very great values and not easily overridden”. But we can ask, in what sense are they very great values? Must they be “greater” than the values within our comprehensive doctrines in order for them to always have priority under normal conditions? Rawls answers as follows: “...these values govern the basic framework of social life—the very groundwork of our existence”. The latter is a phrase borrowed from Mill, and the context in which it resides gives us a clue to its significance:

⁷⁰ Ibid., 31–32, 31n34.

“...but security no human being can possibly do without...Now this most indispensable of all necessities, after physical nutriment, cannot be had, unless the machinery for providing it is kept unintermittedly in active play. Our notion, therefore, of the claim we have on our fellow-creatures to join in making safe for us the very groundwork of our existence, gathers feelings around it so much more intense than those concerned in any of the more common cases of utility...”⁷¹ (emphasis mine)

In context, the “very great good” turns out to be that of personal security. Mill understands the importance and worth of personal security in terms of the value schema of Utilitarianism, but it is not difficult to see how security is also important to Kantians, Christians and Atheists alike. All of those groups will have strong abiding interests in leading their own lives according to their deepest moral convictions, and the very precondition for the possibility of lives lived in pursuit of their chosen conception of the good is the security and stability that a just social structure provides. Reasonable citizens can recognize that personal security is something all persons require, regardless of their more specific ideas of the good. Even the wish that more come to share their own comprehensive views cannot be fulfilled without securing this condition for others.⁷² The good of personal security is broadly shared, and as far as principles go, requires no further

⁷¹ Ibid., 139, 139n6. Cf. John Stuart Mill, “Utilitarianism,” in *The Basic Writings of John Stuart Mill: On Liberty, the Subjection of Women and Utilitarianism*, 2nd ed. (New York; London: Modern Library, 2002), 290–91.

⁷² I will concede that it is entirely possible that had historical conditions been different, very different solutions may obtain.

defense. And so long as the ideas of the good utilized can be broadly shared, it is consistent with the principle of fairness.

We may be worried at this point that the argument advanced turns out to be reducible to a consideration of mutual self-interest. Is the argument is not a principled defense of toleration, but a “mere modus vivendi”? Thus the good of security could possibly be understood in two distinct ways: if we specify it in the sense of reasonable or fair behavior, it means that we desire for its own sake a social world which upholds security for all. This seems consistent with the idea of a sense of fairness, and is non-reductive. Alternatively, we can understand the good of security as mutual advantage – that is, its value is ultimately reducible to considerations of self-interest: we want a social world which is stable and secure because such an environment enables us to fulfill our own interests. To tolerate out of the desire for a peaceful social world because the alternative is worse for our own interests is not to make a principled argument for toleration. I return to this worry in my concluding chapter.

At the present moment I take for granted that citizens do have a mutually recognized institutional identity, share a common human reason, as well as a sense of justice. Even if they are not acting out of it in full compliance, it is possible for them to recognize and develop over time their capacity and willingness to do so. While the temptation to violate just norms is an ever present possibility, citizens can be brought to understand and recognize the duty of fairness towards others. An argument can perhaps proceed as follows: to impose beliefs on others which can be reasonably rejected is to not sufficiently respect the

fact that others are capable of judging the facts of the matter for themselves. In other words, it is to not respect the moral personhood of the person we are attempting to coerce. Thus the very fact we recognize that we each have an institutional identity and relate to each other in a special way within the political domain specifies for us the limits of what we can claim, and also the necessity of what we owe to each other, qua citizen.

Reciprocity and Mutual Respect

The institutional identity of a citizen involves many aspects, and I focus on two main ones, the ideas of reciprocity and mutual respect. It is important to note that in our discussion, an individual who tolerates another believes him to be from his comprehensive moral standpoint, mistaken or wrong. I will attempt to show that the ideas of reciprocity and mutual respect can be understood in a way that does not contradict this.

The concept of reciprocity has an important place in *Political Liberalism*.⁷³ Rawls introduces the “criterion of reciprocity” in order to answer the following question: “...By what ideals and principles, ...are citizens as sharing equally in ultimate political power to exercise that power so that each of them can reasonably justify their political decisions to each other?”⁷⁴ The criterion of reciprocity states that the exercise of political power is proper only when we sincerely believe that the reasons we offer for our political action may

⁷³ See Rawls, *Political Liberalism*, xlvii., on liberal conceptions: “Any conception that meets the criterion of reciprocity and recognizes the burdens of judgment(II:2) is a candidate.”

⁷⁴ *Ibid.*, 445–46.

reasonably be accepted by other citizens as a justification of those actions.⁷⁵ Thus the liberal principle of legitimacy is derivative of the criterion of reciprocity. According to Rawls, the ideal of reciprocity lies between altruism (being moved by the general good), and mutual advantage.⁷⁶ It is not altruistic because it is concerned for the intersubjective good of others in relation to ourselves, and not solely with the interests of others to the exclusion of ours. It is not mutual advantage as it is not concerned with everyone's being advantaged with respect to one's present or expected situation.⁷⁷ Once again the burdens of judgment come to mind: the idea here is not simply acceptance but *reasonable* acceptance. The reasons we provide to others must be those that when provided to us, we can likewise reasonably accept.

If this is the case, then to act in ways satisfying the criterion of reciprocity is neither to give up on the truth of one's comprehensive moral position nor to acknowledge the truth of one's opponents'. It is rather to not support any policy, and to reject the use of state force in order to enforce it, if it cannot be shown to be acceptable (non-rejectable) to other reasonable citizens, who may not share one's comprehensive doctrines. Consider the following reason provided by Rawls in rejecting Kant and Mill's comprehensive liberalism as candidates for a political conception of justice, even that of a liberal society:

“While autonomy as a moral value has had an importance place in the history of democratic thought, it fails to satisfy the criterion of reciprocity

⁷⁵ Ibid., xlii.

⁷⁶ Ibid., 50.

⁷⁷ Ibid., 16–17.

required of reasonable political principles and cannot be part of a political conception of justice. Many citizens of faith reject moral autonomy as part of their way of life.”

The spirit of the complaint (whether one believes it to be strong or weak) is that if accepted as a basis for the basic structure of political society which includes all citizens, the comprehensive liberalism of Kant or Mill will be intolerant in asserting (and imposing) an ultimate conception of the good that can be reasonably rejected by citizens who do not share it. This is of course not to say that certain *elements* of the philosophy of Kant and Mill (e.g. political autonomy or the harm principle) that pass the test of reciprocity cannot be part of the political conception.

Next, can mutual respect be understood in a such a way that similarly respects claims of objective truth, or must mutual respect be based on some kind of positive appraisal of another’s beliefs or actions? A distinction made by Stephen Darwall between two different attitudes of respect one can have for others can perhaps help us make sense of our possibilities. According to Darwall, *Recognition respect* consists in giving appropriate consideration or recognition to some feature of its object in deliberating about what to do. On the other hand, *appraisal respect* consists in an attitude of positive appraisal of that person either as a person or as engaged in some particular pursuit.⁷⁸ Unlike recognition respect,

⁷⁸ Stephen L. Darwall, “Two Kinds of Respect,” *Ethics* 88, no. 1 (1977): 38. I owe this point to Ian Carter, “Are Toleration and Respect Compatible?,” *Journal of Applied Philosophy* 30, no. 3 (August 1, 2013): 195–208.

appraisal respect “does not itself consist in that behavior or in the judgment that is appropriate. Rather, it consists in the appraisal itself.”⁷⁹

Importantly, to respect something in the sense of recognition respect is to “regard it as something to be reckoned with...and to act accordingly”. In a narrow construal of recognition respect as a moral attitude, to respect something is thus to regard it as requiring restrictions on the moral acceptability of actions connected with it: one is not free, from a moral point of view, to act as one pleases in matters concerning something which is an appropriate object of recognition respect in the moral sense.⁸⁰ To have recognition respect for some moral fact or feature is to regard the latter as itself placing restrictions on what it is permissible for one to do.⁸¹ What feature or fact is the appropriate one may be a matter of dispute.

However, if this distinction can indeed be sustained, we have a plausible way of understanding mutual respect which does not require us to affirm the value or truth of another’s comprehensive doctrine or actions. In our conception of toleration, the way citizens mutually respect each other is in recognizing the features of moral personhood shared by all of them: that they each have the ability to conceive and deliberate about ultimate ends, as well as a normally functioning sense of justice. In a related way, mutual respect is expressed in the shared way which public reasoning proceeds: in justifying the use of political power, we are to appeal only to presently accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not

⁷⁹ Darwall, “Two Kinds of Respect,” 39.

⁸⁰ Ibid., 40.

⁸¹ Ibid.

controversial.⁸² Recognizing the features of moral personhood thus set limits on how we may treat others, without presupposing a positive assessment of the person's comprehensive beliefs. In fact, we will have a strong reason to tolerate others, independently of even a potentially negative assessment of their beliefs or behavior (insofar as they are reasonable). This is why,

“...we may with perfect consistency hold that it would be unreasonable to use political power to enforce our own comprehensive view, which we must, of course, affirm as either reasonable or true.”⁸³

Conclusion

In conclusion, I now want to recap some key points and offer a few brief remarks. As discussed in our previous chapter, to tolerate something (a particular behavior, action, person, or belief) in a moral sense, is to think it morally wrong or mistaken, yet to take no action to coercively interfere with it. In an act of toleration, the acceptance component (which provides a reason to not interfere) overrides the objection component, the reason why the thing in question is morally wrong or objectionable. As shown, Rawls' argument for toleration is addressed to those with firm commitment to the objective truth of their own comprehensive doctrine. From the points of view of those comprehensive doctrines, they may find certain practices to be morally objectionable. The acceptance component is made up of two parts, recognizing and accepting that the

⁸² Rawls, *Political Liberalism*, 224.

⁸³ *Ibid.*, 138.

burdens of judgment apply to all, and that citizens qua citizens have a moral duty of fairness towards each other, specified in terms of reciprocity and mutual respect. The moral duty of fairness prohibits imposing a particular set of beliefs or particular code of moral conduct if it can be reasonably rejected by others, just as it prohibits coercively interfering with others whose conduct meets the threshold of reasonableness. To do so would be unfair, and unreasonable.⁸⁴

In analyzing some ideas related to the liberal principle of legitimacy, I hoped to show that they do not appeal to a particular comprehensive conception of a metaphysical or religious kind. These ideas can be specified in an ordinary manner, in ways that the ideal of citizenship already implies. Insofar as actual political life expresses the ideal of citizenship, these concepts and values are likewise instantiated in our political world. In a sufficiently just social and political context, one recognizes they are concepts that are implied in the way citizens already relate to each other, or can be expected to do so. While there are certainly other important values and concepts relevant to strengthening the case of political liberalism, I chose to focus on the two mentioned in great part because of their broad appeal. It is thus easier to make a case on this basis than the value of autonomy, or the “permanent interests of man as a progressive being”. Yet any sensible account of toleration needs to draw in a principled way the line between things which ought and ought not be tolerated. Our account provides an indication as to where the limits of toleration may lie: in the reasonable rejectability of a

⁸⁴ Furthermore, that it is a real possibility for the political values just elaborated to be overridden is never denied by Rawls, and ample examples from history and even daily life are constant reminders of this possibility.

certain practice. In the next chapter, I will examine the controversial issue of physician-assisted suicide, the moral acceptability of which remains greatly disputed.

3. Toleration and controversial issues

Introduction

What does a liberal, Rawlsian conception of toleration lead to in practice? Reasonable people can and very often do disagree about the moral permissibility of certain controversial practices. One who accepts a Rawlsian account of toleration previously discussed - based on the recognition and acceptance of the burdens of judgment, as well as the duty of fairness towards other citizens – almost certainly also has an allegiance to a particular comprehensive conception. Such a comprehensive conception and the principles embodied within it may give rise to strong misgivings about the moral wrongness of many practices. These include religious opposition to physician-assisted suicide, abortion, and homosexuality. It is thus inevitable that some citizens will disagree on moral grounds with certain actions that are within the province of state legislation. If reasonable people disagree about the moral permissibility of certain practices just like they disagree about the truth of comprehensive conceptions of the good, does it follow that they are never to be legally permissible? In other words, ought we (morally and legally) tolerate the practice of controversial practices if we have strong convictions against them? If doctrinal disputes within and between comprehensive conceptions of the good have been intractable, then we can expect the debate about the permissibility of abortion and physician-assisted suicide to be similarly intractable. How should citizens go about the process of debating and passing such laws?

In this chapter, I offer some brief remarks on how a tolerant citizen ought to consider these issues. What I do not offer is a complete argument for or against abortion or euthanasia, even as I suggest in passing some possible conclusions such a society can collectively come to. While many arguments for abortion and euthanasia in applied ethics are deeply complex and worth examining, I cannot examine their individual merits and strengths here. Furthermore, in democratic societies, public policy and legislation is a matter of a complex, irreplaceable political process of debate and discussion, and without further contextual details the provision of which is beyond the scope of my paper, one cannot predict with certainty the outcome of such a debate. At the risk of repetition, what I focus on is not primarily the merits of the arguments themselves, but the *kind* of argument which is being made, and to show how citizens can engage with each other in a tolerant manner, while not compromising on their comprehensive moral views.

I begin by briefly discussing Rawls' views on public reason, and his application to the topic of abortion. Without delving too deeply into its intricacies, I hope to highlight the strengths of proceeding by way of public reason for citizens divided on comprehensive doctrines. Arguing for a position in terms of widely shared political values that can be appreciated independently of specific comprehensive doctrines is itself based in, and expresses mutual respect. Because the laws that are to govern social dealings within a liberal state are meant to apply to all, citizens ought to take this into account. While individuals are committed to comprehensive doctrines that may be against certain controversial practices, they have common interests and a common way of reasoning about those interests that

may allow for them. In other words, other citizens potentially have the legal right to do wrong in a moral sense, by their own lights, and this legal right is secured by the judicial process and the duty of fairness towards others, as laws are meant to apply generally. I then examine Weithman's arguments against "The Philosopher's Brief", showing that arguments in terms of public reasons can be made against assisted suicide as well. One way in which citizens can move beyond the impasse of mutually incompatible and conflicting comprehensive doctrines is by arguing and discussing the issues within the realm of public reasons. Public reasons appeal to widely shared and independent political values, and concerns that are common to all citizens regardless of their convictions. Contrary to what some have argued, public reason is not unfairly biased against religious doctrines: it remains agnostic as to their truth, and does not favor secular comprehensive doctrines. Rather, it seeks common ground. Thus, Weithman's line of argumentation against the constitutional protection of assisted suicide is advanced along professional and medical grounds. The arguments advanced by Weithman can be appreciated independently of specific comprehensive doctrines, for they appeal to a shared concern for maintaining the integrity of the medical profession. I end by discussing the special case of healthcare professionals who may be placed in situations that obligate them to perform procedures they oppose from a moral point of view. I argue that they be granted the right of conscience to abstain from these procedures, unless strong reasons be provided from a public standpoint.

Rawls on public reason and controversial issues

By his own profession, “The Idea of Public Reason Revisited” contains Rawls’ “best statement...of public reason and political liberalism.”⁸⁵ In it, Rawls suggests a way of proceeding on controversial issues, including making short remarks on abortion and homosexuality. Before examining those remarks, I first outline and reconstruct the idea of public reason and how it is supposed to work, then discuss in detail the way controversial issues are meant to be debated and decided upon, according to public reason.

The shift to public reason is motivated by concerns similar to those that animated *Political Liberalism*: citizens realize they cannot reach agreement or even mutual understanding on the basis of their irreconcilable comprehensive doctrines, and thus need to consider what kinds of reason they may reasonably give each other when fundamental political questions are at stake.⁸⁶ Firstly, public reason is restricted in *scope*, in the following senses: 1) it applies only to fundamental political questions, 2) it applies in a strict sense to public officials in their public capacity, 3) its content given by a family of reasonable political conceptions of justice, 4) the application of these conceptions in discussions of coercive norms to be enacted in the form of legitimate law for a democratic people.⁸⁷ Usually discussed in the language of rights and liberties, abortion and euthanasia can be considered matters of basic justice; in light of the criteria just mentioned, they appear to fall well within the scope of public reasoning. The

⁸⁵ John Rawls, *Political Liberalism* (New York: Columbia University Press, 2005), 438.

⁸⁶ *Ibid.*, 441.

⁸⁷ *Ibid.*, 442.

intuitive idea of public reason applying to public officials in their lawmaking capacity is not difficult to understand: ideally, public officials are not to act from and for narrow personal, religious and political interests, but from and for the common good. However, the ideal (as distinguished from idea) of public reason is also realized by citizens who are not public officials⁸⁸: ideally, citizens are to think of themselves as if they were legislators and ask themselves what statutes, supported by reasons satisfying the criterion of reciprocity⁸⁹, they would think most reasonable to enact.⁹⁰ Citizens also have a moral duty of civility to hold public officials accountable to standards of public reason. Taken together, public reason has an important role in the public life of a citizen, even when they are not legislators directly voting on the passage of laws.⁹¹

A second important point is that public reason is linked to reciprocity and legitimacy. According to Rawls, a citizen engages in public reason when he or she deliberates within a framework of what he or she sincerely regards as the most reasonable political conception of justice, a conception that expresses political values others as free and equal citizens might also be expected to reasonably endorse.⁹² The content of public reason is given by a family of political conceptions of justice rather than a single conception, the limiting feature of this

⁸⁸ Ibid., 444–45.

⁸⁹ Ibid., 446: “The criterion of reciprocity requires that when those terms are proposed as the most reasonable terms of fair cooperation, those proposing them must also think it at least reasonable for others to accept them, as free and equal citizens, not as dominated and manipulated, or under pressure of an inferior political or social position.”

⁹⁰ The Kantian spirit of this ideal is acknowledged by Rawls. See *ibid.*, 445n16.

⁹¹ It is important to note that public reason does not apply to the “background culture”, the culture and contexts of religious bodies and other associations, only to the “public forum”. See *ibid.*, 442–43.

⁹² Ibid., 450.

family being the criterion of reciprocity, applied between free and equal citizens that are reasonable and rational.⁹³ One of the most important parts of Rawls' argument concerns how legitimate law is arrived at:

“...when, on a constitutional essential or matter of basic justice, *all appropriate government officials act from and follow public reason, and when all reasonable citizens think of themselves ideally as if they were legislators following public reason*, the legal enactment expressing the opinion of the majority is legitimate law. It may not be thought the most reasonable, or the most appropriate, by each, but it is politically (morally) binding on him or her as a citizen and is to be accepted as such.”⁹⁴
(emphasis mine)

It is interesting to note that it is not the mere majority of votes, but in addition, deliberating and voting following public reason that makes a law legitimate. Thus, for Rawls, a citizen is required (by the duty of honoring a legitimate law) to tolerate a practice that he considers immoral from his comprehensive doctrine, if in fact a legitimate law is passed permitting it by way of public reason. The citizen need not himself exercise the right to participate in the practice he considers immoral, but only to honor the right of others to choose to do so.⁹⁵

⁹³ Ibid.

⁹⁴ Ibid., 446. This formulation comes very close to Rousseau's notion of the general will, and Kant's idea of universal moral legislation.

⁹⁵ Ibid., 480. Some familiar cases come to mind: gambling, prostitution, abortion, same-sex marriage, and assisted suicide. When legalized, these activities do not directly require anyone to actively participate, only to abstain from coercively interfering.

Thirdly and crucially, public reasoning aims for public justification, appealing to political conceptions of justice, and to ascertainable evidence and facts open to public view. It is not simply valid reasoning, but argument addressed to others (qua citizens): “it proceeds correctly from premises we accept and think others could reasonably accept to conclusions we think they could also reasonably accept.”⁹⁶ Public reasoning proceeds entirely within a political conception of justice: reasoning in a public manner is conducted exclusively in terms of political values. Such values include “...justice, domestic tranquility, the common defense, the general welfare...”, among others.⁹⁷ To those we can add the familiar liberal values of equality and freedom. Public reason is not about “specific political institutions or policies”, but the *kind* of reasons that citizens are to appeal to in making political justifications to one another when they support laws and policies.⁹⁸ In addition, it is not just the abovementioned *concepts* that are obtained from within a political conception or public political culture, but also the way they are understood. Consider the examples of autonomy and toleration: each of these concepts can have a purely political meaning, or can proceed from (and be understood in terms of) a comprehensive doctrine.⁹⁹ Political values thus have independent validity from the point of view of citizens, regardless of the comprehensive doctrines they adhere to. To mutually reason from this shared common ground is not only to express reciprocity, but also fairness.

⁹⁶ Ibid., 465.

⁹⁷ Ibid., 453.

⁹⁸ Ibid., 476.

⁹⁹ See *ibid.*, 455–56. for Rawls’ discussion of autonomy, and 461–462 for his discussion of toleration. Of course, the distinction between two possible ways is not always clear, and they can have significant overlaps. However, the political sense is primary.

The following should now be clear: firstly, if public reasoning is followed conscientiously, the process of lawmaking in a democratic political setting does not simply exclude religious reasons for the sake of obtaining liberal or permissive outcomes. If Rawls is correct, then the “playing field” is in a sense level between religious and secular comprehensive doctrines.¹⁰⁰ Citizens with secular comprehensive doctrines must likewise offer public reasons for their proposals. Secondly, public reasoning (and political liberalism) is agnostic with respect to the truth of religious comprehensive doctrines, as with secular and philosophical comprehensive doctrines, instead beginning from widely shared political values. In addition, Rawls allows for comprehensive doctrines to be brought into public debate, provided in due course public reasons are provided.¹⁰¹ Doing so allows citizens to mutually understand each other’s points of view, and also for discourse to begin when political values are weak and not widely shared.

We can now begin to understand how controversial issues are to be publicly debated and voted on, ideally speaking. To reiterate, public reason is concerned with the permissible kind of reasons offered in support of a law or public policy: such reasons are provided in terms of political values from political conceptions of justice that satisfy the criterion of reciprocity. Two examples from Rawls can perhaps help us demonstrate just what kind of reasons and cases are legitimately raised from the point of view of public reason, the controversial issues of same-sex marriages, and abortion. For Rawls, the state has a legitimate

¹⁰⁰ Ibid., 457–58.

¹⁰¹ Ibid., 453, 463–64.

interest in in the family insofar as is interested in the institutions that are needed to reproduce political society over time. Given this interest, the government would appear to have no interest in the particular form of family life, or of relations among the sexes, except if they affect the orderly reproduction of society over time.¹⁰² Rawls then distinguishes illegitimate from legitimate kinds of values from which the government may adduce support for defending a particular form of the family: on the one hand, appeals to monogamy as such and against same-sex marriages are not permissible, if they only reflect comprehensive doctrines. On the other hand, if it were true that same-sex marriages are destructive to the raising of children, the state would have a public reason to oppose same-sex marriages on that ground.¹⁰³ Another example is Rawls' discussion of Cardinal Joseph Bernadin's attempt to argue against the right to abortion on the basis of three political values, namely public peace, essential protections of human rights, and the commonly accepted standards of moral behavior in a community of law.¹⁰⁴ Such an argument is acceptable from the point of view of public reasoning as it makes no reference to comprehensive religious doctrines, only to widely shared political values.¹⁰⁵

¹⁰² Ibid., 456–57.

¹⁰³ Same sex-marriage being destructive to the raising of children is more appropriately a public reason in objection to adoption and artificial insemination, and less so to same-sex marriage. I owe this point to A/P Tan Sor Hoon. Perhaps a better characterization of a public reason to oppose same-sex marriage is if it were true that legalizing it would be inimical to the reproduction of political society in significant ways.

¹⁰⁴ Ibid., 480n82.

¹⁰⁵ However, this is not to say that the argument is a good one simply, as it can be fallacious or mistaken.

From this it follows that some controversial issues are far from settled or biased in favor of liberal conclusions, and legislation that can pass the muster of public reason must be based on an assessment of the balance of arguments in terms of political values and the public good. I now move on to examine in brief the arguments raised by Dworkin and Weithman on the constitutional protection of the right to assisted suicide, showing how they meet the standards set by public reason.

The “Philosopher’s Brief”

The moral and legal injunction to not kill another human being is arguably one of the oldest, if not the oldest prohibitions known to humankind. It is a well-established doctrine in many major religions, philosophical treatises, but also in constitutional and civil law. Moral and legal exceptions which make killing permissible are rare, and the clearest ones are in cases of self-defense, or the defense of another – that is to say, in defense of life. If there are any candidates for a body of universal principles of morality, the injunction against killing will be among the strongest and most obvious. This is perhaps the reason why abortion and assisted suicide continue to evoke strong responses, even in places where such practices have been legalized. But while for cases of abortion there are disagreements as to whether the human life being terminated has full legal and moral status (and thus is of concern in the relevant respects), assisted suicide (at least of the legitimate kinds) is usually limited to persons who have full legal status. Therefore, the case of assisted suicide presents an especially interesting

case of a controversial issue on which an individual's rights and autonomy are potentially at stake.

Assisted suicide is to be distinguished from voluntary euthanasia¹⁰⁶: for the latter, the patient is the one who undertakes the act of administering the lethal medication; for the former, the doctor by request of the patient is the one who administers the lethal medication.¹⁰⁷ Assisted suicide is legal only in a handful of countries, and has an interesting and convoluted legal history, which I do not intend to discuss.¹⁰⁸ Even though assisted suicide and voluntary euthanasia have slightly different moral and legal considerations, they are similar in that four groups are involved: the state, individual citizens (some who are morally opposed to the legalization of said practices), terminally ill patients who wish to exercise the option to end their lives, and healthcare professionals who are supposed to aid them. I will comment on how I think these groups can come to engage each other in my conclusion.

As previously discussed, the ideal of public reason is adhered to when citizens reason in terms of political values that are widely shared. My aim here is to discuss one such case made against the constitutional protection of assisted suicide. The possibility of making such a case should hopefully show that a permissive stance towards controversial issues like assisted suicide is not a

¹⁰⁶ Voluntary euthanasia is further distinguished from non-voluntary euthanasia, which is by far a more controversial case, and involuntary euthanasia, deemed to be murder in most jurisdictions. See Robert Young, "Voluntary Euthanasia," in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Fall 2016 (Metaphysics Research Lab, Stanford University, 2016), <https://plato.stanford.edu/archives/fall2016/entries/euthanasia-voluntary/>.

¹⁰⁷ Gail Tulloch, *Euthanasia - Choice and Death*, 1 edition (Edinburgh University Press, 2005), 33–34.

¹⁰⁸ See Young, "Voluntary Euthanasia"; Tulloch, *Euthanasia - Choice and Death*, 61–67.

forgone conclusion in public reasoning; rather, there can be compelling public reason arguments both for and against assisted suicide. I begin by providing a brief discussion of some important points of “The Philosophers’ Brief”.

In 1997, Ronald Dworkin and 5 other philosophers (including Rawls) published an amicus curiae in relation to the pending U.S. Supreme Court decisions on whether dying patients have a right to choose death rather than continued pain and suffering.¹⁰⁹ Then, in only one American state was it legal for doctors to prescribe lethal pills for patients who want to kill themselves.¹¹⁰ According to Dworkin, The brief “defines a very general moral and constitutional principle – that every competent person has the right to make momentous personal decisions which invoke fundamental religious or philosophical convictions about life’s value for himself.” The brief further states that the legal cases in question “do not invite or require the Court to make moral, ethical, or religious judgments about how people should approach or confront their death or about when it is ethically appropriate to hasten one’s death or to ask others for help in doing so”, but “on the contrary, they ask the Court to recognize that individuals have a constitutionally protected interest in making those grave judgments for themselves, free from imposition of any religious or philosophical orthodoxy by court or legislature.”¹¹¹ Further, the brief argues that “(d)enying the

¹⁰⁹ Ronald Dworkin et al., “Assisted Suicide: The Philosophers’ Brief,” *The New York Review of Books*, accessed January 10, 2017, <http://www.nybooks.com/articles/1997/03/27/assisted-suicide-the-philosophers-brief/>.

¹¹⁰ In recent years, more U.S. states have legalized physician assisted suicide. See “New Mexico Court Strikes down Ruling That Allowed Assisted Suicide,” *The Washington Times*, accessed January 12, 2017, <http://www.washingtontimes.com/news/2015/aug/11/assisted-suicide-new-mexico-ruling-struck-higher-c/>.

¹¹¹ Dworkin et al., “Assisted Suicide.”

opportunity to terminally ill patients who are in agonizing pain or otherwise doomed to an existence they regard as intolerable could only be justified on the basis of a religious or ethical conviction about the value or meaning of life itself.”¹¹²

Part of the argument proceeds by analogy to a legal precedent set in *Casey*, that a state cannot constitutionally proscribe abortion in all cases as it protects a sphere of autonomy in which individuals must be permitted to make certain decisions for themselves. The Court “began its analysis by pointing out that [a]t the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.” Choices that involve these are “central to personal dignity and autonomy”, and “are central to the liberty protected by the Fourteenth Amendment.”¹¹³ Thus, according to the brief, to allow a total prohibition on abortion would be to permit a state to impose one conception of the meaning and value of human existence on all individuals. However, the brief concedes that “...patients in certain circumstances have a right that the state not forbid doctors to assist in their deaths, but they have no right to compel a doctor to assist them. The right in question, that is, is only a right to the help of a willing doctor.”¹¹⁴

¹¹² Ibid.

¹¹³ Ibid.: “If there is any fixed star in our constitutional constellation, it is that no official...can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. A person’s interest in following his own convictions at the end of life is so central a part of the more general right to make ‘intimate and personal choices’ for himself that a failure to protect that particular interest would undermine the general right altogether.”

¹¹⁴ Ibid.

Throughout the brief, the concept and meaning of personal autonomy and liberty appealed to is an ordinary one, and we can add, a political value that is widely shared by all citizens regardless of their comprehensive commitments (and in the case of the U.S., it is protected by the American Constitution as fundamental). Personal autonomy as a political value requires no further philosophical or religious grounding, even though its limit still must be worked out in practice, in the better part through legislative arguments. A devout Christian and an atheist can both appreciate the value of personal autonomy: it is necessary to each so they can live their lives consistent with their moral convictions in a shared political context peacefully, as far as possible. *Prima facie*, the argument thus seems plausibly strong from the point of view of public reasoning, and if we accept the standpoint of public reason, have a good reason to tolerate the practice of assisted suicide should it be legalized.

Weithman contra physician-assisted suicide

It is the abovementioned claim that denying the right to physician-assisted suicide “could only be justified on the basis of a religious or ethical conviction” Paul Weithman takes issue with.¹¹⁵ Weithman argues that there are other justifications available which are consistent with the core claim of the brief’s constitutional argument, appealing to what Rawls calls “a balance of political values” that can be mutually accepted by reasonable citizens.¹¹⁶ In short, his position is that doctors should cultivate a virtue centered on an absolute

¹¹⁵ Paul J. Weithman, “Of Assisted Suicide and ‘The Philosophers’ Brief,’” *Ethics* 109, no. 3 (1999): 550.

¹¹⁶ *Ibid.*

prohibition, that of acting from the intention of killing their patients.¹¹⁷ For Weithman, the reasons doctors should hold themselves to a prohibition on intentionally causing their patients' deaths are "quite similar" to the reasons doctors should hold themselves to an absolute prohibition on seducing them, and these in great part have to do with fulfilling their professional responsibilities as physicians. One of a physician's role-specific duties is to give good care to his/her patients, and feelings that develop from a shared sexual experience can cloud his / her judgment and compromise this.¹¹⁸ Also, patients are in an asymmetrical power relationship with their doctors, and must make themselves vulnerable to their doctors to be diagnosed and properly treated. If they know that doctors have the intention to seduce them, they may be less forthcoming in these respects.¹¹⁹

Weithman further argues for a blanket prohibition that leaves no room for exceptions or the exercise of case by case judgment, due to the potential for serious damage to the patient.¹²⁰ He argues that "(r)ationalization and self-deception are more effectively taken out of play by a stable commitment to refrain from actions of that kind under *all* circumstances..."¹²¹ Thus, the value of observing the absolute moral prohibition against having sexual relations with their patients:

"derives from the importance of two distinct but related functions the prohibition plays in the practice of medicine. First...it enables physicians

¹¹⁷ Ibid., 554.

¹¹⁸ Ibid.

¹¹⁹ Ibid., 555.

¹²⁰ Ibid.

¹²¹ Ibid., 556.

to cope with a potentially powerful temptation to have sex with their patients who may be incapable of genuine consent. Second, it grounds patients' confidence that doctors will not accede to this temptation and exploit them if they place themselves in the vulnerable position they must assume if they are to receive the care they need."¹²²

Weithman then argues that these considerations explain why the Hippocratic Oath included an absolute prohibition in the first place.¹²³ The Oath is a professional oath, and one of its functions is to impose role-specific duties, and provide physicians with a special reason to honor them. As discussed, doctors are in a privileged position of power over their patients in their specific medical relationship, and it is particularly important that they do not abuse this position in ways that undermine their professional obligations.¹²⁴ Also, swearing the Oath is a public act, and furnishes grounds for public trust in the medical profession, trust being necessary if patients are to turn to their doctors for treatment.¹²⁵ For similar reasons, the prohibition against assisted suicide is to be absolute: because the consequences for making an error, even a honest mistake is potentially very grave, the corresponding need to protect patients and uphold their trust in the medical practice tells in favor of physicians holding themselves to an absolute moral prohibition.¹²⁶

¹²² Ibid.

¹²³ See *ibid.*, 565–66, for the significance of the oath.

¹²⁴ *Ibid.*, 557.

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*, 561.

Weithman's argument does not simply proceed from the moral wrongness of physician-assisted suicide, but from the potential harm to the "public interest reasonably conceived" that can arise from permitting it.¹²⁷ The essence of Weithman's arguments speaks to an individual's interest (as well as society's larger interest) in an effective healthcare system and the need to protect patients from harm. He argues that while the risks that doctors may make mistakes or succumb to temptation are not sufficient grounds for a categorical ban on physician-assisted suicide, the provision of adequate basic healthcare to all citizens is "a demand of basic justice".¹²⁸ Thus the state's interest in making healthcare publicly available implies an interest in its making publicly available the reasons have to trust their doctors:

"Publicly known legal prohibitions on physician-assisted suicide, like publicly known regulation of the quality of medical care, serve this state interest. This is because legalizing physician assisted suicide or according it constitutional protections would create the public perception that doctors act from the intention of causing the deaths of their patients and...would undermine public confidence in the medical profession."¹²⁹

In conclusion, I want to note that in the full process of public debate and legislation a far more detailed analysis of these arguments must be undertaken, not to mention other relevant arguments that have not been raised. While my discussion hardly begins to do the authors justice in that respect, my primary

¹²⁷ Ibid., 574.

¹²⁸ Ibid., 566.

¹²⁹ Ibid., 567. In fact, the argument is more complicated than this: compare 567-573.

intention was to highlight an example of arguing in terms of public reasons on the controversial issue of physician-assisted suicide.¹³⁰ On this latter point, I hope I have made good.

Conclusion

I now return to the original question that motivated the discussions on public reason and physician-assisted suicide: ought citizens morally and legally tolerate controversial practices like physician-assisted suicide and abortion that they morally disagree with, and what possible reasons can we ground such toleration on? I argued that if we accept the ideal of public reason, we can have such grounds: certain controversial issues like abortion and physician-assisted suicide are matters of basic justice, and thus fall within the scope of public reasoning. In addition, given that in public reasoning, argumentation appeals to widely shared political values, we do have shared independent grounds on which we can begin to discuss and decide upon controversial issues. Dworkin and Weithman on the issue of physician-assisted suicide gave us some examples of what such shared interests and political values are: on the one hand, the state and individual citizens have a legitimate interest in protecting personal autonomy, and on the other, an interest to safeguard the integrity of and public trust in the practice of medicine. These values make no reference to comprehensive doctrines

¹³⁰ Throughout the chapter, I have been considering the case of physician assisted suicide with physicians and their professional code as the main focus. Such an argument does not preclude the possibility of creating another profession that specializes in providing advice relevant to suicide, in the unlikely scenario that it become necessary from a legal and political standpoint to provide the option of assisted suicide, yet at the same time preserve the professional integrity of medicine.

of any sort, only to the political interests that concern society as a whole, and citizens individually.

Of course, this does not mean that the citizen or society is required to tolerate just about anything, or that the decision in favor of physician-assisted suicide is a forgone conclusion: only for legitimate laws that are based on a consideration of a balance of public reasons does the requirement of toleration arise, if they do in fact go against one's comprehensive beliefs. Citizens who are not legislators are not powerless in that they still have important roles to play in the public forum, debating, petitioning, and holding public officials accountable, even though they do not directly vote on laws. Thus, if physician-assisted suicide does become legitimate law, tolerating it is consistent with one's holding the physician-assisted suicide to be morally wrong or mistaken. It has been noted by Rawls that having a legally protected right to do something does not mean that one is required to exercise that right, only that one abstain from forcefully preventing others from exercising their rights. Neither should the "losing" side think it an affront to their most fundamental beliefs, as public reasoning (and political liberalism) makes no claims on the truth of those beliefs. Rather, they have options that continue to be available to them, to convince others through persuasion or to challenge judicial decisions.

Having described the situation from the point of view of the state and the citizen, what about physicians who are (hypothetically, if such a law is passed) legally permitted to assist in suicide? Recall that the liberal principle of legitimacy specifies that It is unfair (unreasonable) to impose through coercive force what

can be reasonably rejected; citizens owe each other a moral duty of fairness, specified in terms of mutual respect and reciprocity. While laws are backed by the coercive force of the state and opposing a legitimate law seems to be unreasonable, current laws permitting physician-assisted suicide do not require unwilling physicians to participate, in addition to having stringent requirements which must be met before assistance can be legally rendered.¹³¹ The situation is much the same with abortion, with many jurisdictions providing a clause for conscientious objection.¹³² It is recognized fairly widely that from the standpoint of the liberty of conscience, some weight must be given to the comprehensive moral convictions of individual doctors. In a similar way toleration, conceptually speaking, does not entail the duty to aid someone in a practice one has strong moral objections against. Thus, at the very least, toleration would be consistent with having the option of abstaining from such procedures, should they become within one's professional purview. If assisted suicide and / or voluntary euthanasia is to be legalized, then at an institutional level there ought to be sufficient provisions for such options to be utilized. But the individual physician ought not be compelled to provide such a service as part of his professional obligations, as it violates his liberty of conscience.

In this chapter I have discussed controversial issues of a moral nature. This is not to say that the only possible issues on which there is reasonable disagreement are moral ones; one can imagine citizens disagreeing on a whole

¹³¹ Tulloch, *Euthanasia - Choice and Death*, 65–66.

¹³² See Singapore Statutes, Termination of Pregnancy Act, Chapter 324, 6(1)-(2)

host of issues, like the budget, social welfare, education and so on. Rather, the hope is that on issues where there is especially strong and intractable moral disagreement, we are not condemned to an impasse, nor the imposition of one comprehensive viewpoint over the rest.

4. Hampton, Shklar, and political liberalism

Introduction

*Eventually we want to ask whether the fact of reasonable pluralism is a historical fate we should lament. To show that it is not, or that it has its very considerable benefits, would be to reconcile us in part to our condition.*¹³³

Liberals are sometimes perceived to be among other things weak-minded relativists, and irredeemably hopeful about human beings. They are weak minded, it is claimed, because the toleration that is characteristic of liberalism is unable to pronounce judgments on the morality of public and private conduct, for fear of violating its own neutrality. In addition, the permissiveness which accompanies a liberal society presupposes and / or entails relativism, a state of affairs in which every moral position is as good as any other, or at worst, no objective assessment can be made about their relative validity and merit. Furthermore, actual social life and human history has shown that human affairs can quickly degenerate from civilization to chaos. Even within civilized and peaceful societies, the preponderance of law-abiding citizens and the rule of law is threatened to the extent that there exist a significant number who refuse to honor such laws, except only as a pretense. This is something liberals must recognize, and it is said that their maintenance of toleration and their expectation of mutual respect between citizens in light of such circumstances is something of a pipe dream.

¹³³ John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly, 2nd edition (Cambridge, Mass.: Belknap Press, 2001), 5.

Given the *prima facie* desirability of toleration, how are we then to ground it, given that moral and religious pluralism endures in society? If there are a range of arguments for toleration, which one (and which conception of toleration) would be most suitably addressed to citizens of a liberal democratic society? For Rawls, the desiderata for such arguments are that they cannot rest on the creedal acceptance of particular comprehensive doctrines, whether religious or philosophical. If they are, they will be unconvincing to the great majority of people that such arguments are addressed to, those who hold reasonable but non-liberal comprehensive doctrines. Furthermore, it would be *unfair and illegitimate*, from the standpoint of political liberalism, as it would mean having them accept as a basis of political society principles that cannot be reasonably justified to them, failing to uphold the “liberal principle of legitimacy”.

A second consideration is that *modus vivendi* type arguments which are ultimately reducible to considerations of mutual advantage are unsuitable, for if they are the *only* grounds for toleration, then the society which they inform will not be sufficiently stable; should the balance of interests and power shift significantly, toleration may quickly lapse and it may no longer make sense for the now more powerful group to tolerate the weaker one. Whereas principled arguments that are comprehensive in nature may be overly sectarian and have limited appeal to all but comprehensive liberals, pragmatic *modus vivendi* type arguments will lose their appeal for the stronger party if the balance of power shifts in their favor. Thus Rawls would have achieved something quite significant if his argument for toleration avoids the Scylla and Charybdis as specified; that is,

if it is both sufficiently “thin”, and not *merely* pragmatic. I have attempted to argue in Chapter 2 that an argument from the burdens of judgment appealing to, among other elements, the identity of a citizen and mutual respect meets these requirements. I then tried to show the shape that such toleration can take, citing the specific case of controversial laws regarding abortion and physician-assisted suicide. My argument amounts to the claim that citizens, regardless of their more specific views concerning religious and / or moral truth (or its impossibility), have a principled reason to tolerate others’ views, behavior, and the practices one sincerely believes to be morally wrong and mistaken.

As individuals, we may not think that a particular law is congruent with our deepest moral beliefs. One such example which continues to divide many is the moral permissibility of first trimester abortion, which many are divided on. But whatever our more particular views on abortion, euthanasia, and a whole host of other issues of moral significance, citizens have an institutional identity and relate to each other according to publicly accepted and affirmed norms. Thus to not have one’s views about the good enshrined in the form of a coercive law does not make the law less deserving of respect, and certainly does not undermine our relationships with each other as citizens. The sense in which we respect others and public legislation is not a positive appraisal of another’s views or way of life, but is based on reciprocity and mutual respect of each other as citizens. Conversely, the use of coercive force to intervene with the lives of others when there are no legitimate reasons to do so violates mutual respect.

Religious organizations on the other hand, may have good reasons (from its doctrinal standpoint, as well as for reasons of unity and survival) to not tolerate certain kinds of conduct, for instance the expression of heretical beliefs within its membership. They may deem that certain members should be excommunicated or that certain kinds of teaching ought to be suppressed, and it would not be illegitimate for them to do so. But excommunicated former members ought not for that reason become social and political outcasts; they continue to participate in the greater social world.¹³⁴ It follows that the limits of toleration would be drawn with respect to what can be justified in terms of the general interests of such persons, some of which include the necessary conditions for survival and personal security.

For many, such a way of conceiving toleration is fraught with difficulties. Some critics of Rawls express doubts that the methodology of political liberalism is truly “political”. One such critic charges Rawls of having smuggled Christian premises in his conception of a person and the political good.¹³⁵ If this is the case, then toleration procured by way of political liberalism would prove to depend on at least a partially-comprehensive doctrine, thus proving controversial. Other critics seize upon Rawls’ usage of the concept of “reasonableness”, remarking

¹³⁴ See John Rawls, *Political Liberalism* (New York: Columbia University Press, 2005), 31: “...we refer to a profound and pervasive shift, or reversal, in our final ends and commitments; we refer to our different moral (which includes our religious) identity. On the road to Damascus Saul of Tarsus becomes Paul the Apostle. Yet such a conversion implies no change in our public or institutional identity...”

¹³⁵ David H. McIlroy, “Locke and Rawls on Religious Toleration and Public Reason,” *Oxford Journal of Law and Religion* 2, no. 1 (April 1, 2013): 21–22.

that it has illiberal undertones.¹³⁶ Furthermore, if reasonableness, understood as the willingness and ability to offer and abide by fair terms of social cooperation is reducible to merely considerations of self-interest, does this not shift the weight greatly in favor of a *modus vivendi* conception? In fact, Rawls says remarkably little by way of arguing for such an important part of his philosophy. However, Rawls himself shows that he is not unaware of these worries when he comments on the distinction he makes between the reasonable and the rational:

“It may not be possible to prove that the reasonable cannot be derived from the rational. A negative statement of this kind is simply a conjecture. The best one may be able to do is to show that the serious attempts (Gauthier’s is an example) to derive the reasonable from the rational do not succeed, and so far as they appear to succeed, they rely at some point on conditions expressing the reasonable itself. **If sound, these remarks suggest that in philosophy questions at the most fundamental level are not usually settled by conclusive argument. What is obvious to some persons and accepted as a basic idea is unintelligible to others. The way to resolve the matter is to consider after due reflection which view, when fully worked out, offers the most coherent and convincing account.** About this, of course, judgments may differ.”¹³⁷ (emphasis mine)

¹³⁶ Jean Hampton, “The Common Faith of Liberalism,” in *The Intrinsic Worth of Persons: Contractarianism in Moral and Political Philosophy*, ed. Daniel Farnham, 1 edition (New York: Cambridge University Press, 2006), 176–79.

¹³⁷ Rawls, *Political Liberalism*, 53.

The main point of this chapter is to address some of these concerns. I argue that the Rawlsian conception of toleration can be shown to be i) suitably “political” and not necessarily “comprehensive”, ii) a substantive liberal conception (and not purely formal, nor relativistic or skeptical), iv) principled and not a mere *modus vivendi*.

Is Rawlsian toleration too good to be true?

One critic who has expressed some of the worries highlighted is Jean Hampton. In *The Common Faith of Liberalism*, Hampton argues that Rawls rejects what she terms “enlightenment liberalism”, the idea “that reason can yield a true comprehensive (and secular) conception of justice that can bind a pluralist society”, and provide a just and stable foundation for its political life.¹³⁸ The transition from the “comprehensive” liberalism of *A Theory of Justice* to a strictly “political” liberalism was motivated by Rawls’ acknowledgement that his own earlier attempt to ground political society on a single comprehensive conception of liberalism could be just as “sectarian” as doing so on a comprehensive religious doctrine. If founded on a comprehensive conception, the acceptance of toleration and other familiar liberal principles may violate the very principles which they insist on. Furthermore, as previously discussed, Rawls does not believe that the conscientious, sincere, and correct exercise of human reason will lead to convergence on a single set of answers regarding the ultimate good (the most choice-worthy life, whether there exists a God and what that entails etc.). In fact,

¹³⁸ Hampton, “The Common Faith of Liberalism,” 151–53.

the opposite seems to be true: what he calls the “fact of reasonable pluralism”, accounted for by the burdens of judgment. For this reason, Rawls eschews metaphysics and pursues a “method of avoidance” regarding the truth of such doctrines.

Hampton does not believe that Rawls’ political liberalism ultimately succeeds in formulating a liberalism that is genuinely non-sectarian and non-comprehensive. More significantly, she argues that there is no “third way” between prudential and comprehensive arguments for liberalism (and by implication, toleration). Thus, Rawls is compelled to choose between them:

*...If...Rawls rejects a conception of political stability that is based on a politically expedient (and likely temporary) consensus, he must endorse a conception of liberalism little different from the Enlightenment liberalism he claims to reject.*¹³⁹

The title of her article is indicative of her main argument: that there is a common core of concepts which are shared by various seemingly disparate liberal theorists including Rawls, despite their different conceptions of liberalism. For instance, the cardinal concepts of “freedom” and “equality” can be interpreted and fleshed out in many particular ways, even as they are contained within all liberal theories. Hampton’s argument turns on one of these general tenets, the “common faith” in reason that all “enlightenment liberals” supposedly share:

¹³⁹ Ibid., 153.

*Reason is the tool by which the liberal state governs. Whatever the religious, moral, or metaphysical views of the people, they are expected to deal with one another in the political arena through rational argument and reasonable attitudes, and the legitimating arguments directing at individuals in order to procure their consent must be based on reason.*¹⁴⁰

Hampton claims that “all liberals have been committed to the Enlightenment idea that human beings have the rational capacity to grasp the nature of the world – not just the physical world, but the moral and social world whose truths a legitimate society must respect.”¹⁴¹ It is worth noting this is not the decidedly controversial view that reason is superior to religious belief or revelation, but that there is a “normal faculty of reasoning” common to all that suffices for working out how political society ought to be structured, regardless of our particular religious beliefs.¹⁴²

Hampton points out that there are many other liberals who like Rawls take care not to embed their concepts (for example “freedom”) within a larger theory of morality, one of whom is Joel Feinberg.¹⁴³ Thus Rawls’ claim that his political liberalism is “freestanding” does not appear to be as unique as it seems. If Rawls, like Feinberg, “still proceeds by way of philosophical argumentation and the

¹⁴⁰ Ibid., 159.

¹⁴¹ Ibid., 160.

¹⁴² Ibid.

¹⁴³ Ibid., 164. See Hampton’s quotation from Feinberg’s *The Moral Limits of the Criminal Law*: “...But I make no effort to derive some of these responses from the others, or to rank them in terms of their degree of basicness...I do not believe that such an approach is precluded, but only that it is unnecessary. Progress on penultimate questions need not wait for solutions to the ultimate ones.” Compare John Rawls, “The Independence of Moral Theory,” in *Collected Papers*, ed. Samuel Freeman, Revised ed. edition (Harvard University Press, 2001).

search for moral truth”, then does his political liberalism manage to avoid the pitfalls of all other hitherto attempts? Hampton raises the following possible reply, only to quickly reject it: that Rawls appeals to particular conceptions of freedom and equality as ideas which are accepted in modern democratic regimes.¹⁴⁴ Indeed, this is similar in spirit to Rawls’ multiple mentions of a “shared fund of ideas” implicit within the public political culture of a liberal democracy, ideas that can be used as fixed points of an account of political liberalism.¹⁴⁵ However, Hampton thinks that Rawls must (and has) rejected this for two reasons. Firstly, she claims, even if it were true that everyone in these regimes happened to accept the Rawlsian understanding of these ideals, assuming them because they happen to be accepted is no way to generate a theory of justice for a pluralist society. Such a foundation makes the ideals a mere *modus vivendi*, “a politically convenient starting point in our time” (and one may add, particular place), but is inappropriate for other political societies, and perhaps also for ours in years to come when different ideals hold sway.¹⁴⁶ Next, according to Hampton it is “strikingly implausible” to claim that the specifically *Rawlsian conceptions* of freedom and equality are commonly accepted in these regimes. Rawls interprets and develops the said concepts into a particular conception, but this supposedly fixes them in such a way that certain persuasions will not be able to accept, Hobbesians cited as a case in point.¹⁴⁷ Rawls’ minimalist and supposedly

¹⁴⁴ Hampton, *The Common Faith of Liberalism*, 164.

¹⁴⁵ Rawls, *Political Liberalism*, 8, 100–101.

¹⁴⁶ Hampton, “The Common Faith of Liberalism,” 165; Jean Hampton, “Should Political Philosophy Be Done Without Metaphysics?,” *Ethics* 99, no. 4 (1989): 803.

¹⁴⁷ Hampton, “The Common Faith of Liberalism,” 165–66: “...it is a conception that makes reference to ‘moral powers,’ it presupposes a certain understanding of human beings, and is at least a minimal theory of human agency. Those who take issue with the idea that we have both

non-metaphysical methodology thus requires the same (though unavoidable) step of commitment to certain positions in “non-political moral and philosophical issues”, making his political liberalism no different from traditional accounts of liberalism.¹⁴⁸ There is no way to do political philosophy but to develop general concepts into particular conceptions, and doing so involves fixing certain presuppositions about human beings, however minimal they are.

Most importantly, the argument from the burdens of judgment is evidence that Rawls relies on the enlightenment notion of reason after all. According to Hampton, Rawls continually talks as if there is a “fact of the matter” about reasonableness, and that the burdens of judgment and the reasonable disagreement it implies are facts that all reasonable persons must recognize. While reasonable people can (and probably will) conclude differently regarding the truth of ultimate matters, the burdens of judgment seems to be an exception they can all converge on. Thus toleration is not something that people in contemporary societies just happen to think right, nor the product of societal consensus, but is supposed to be the conclusion “...of a bit of reasoning that Rawls believes is undeniable”.¹⁴⁹ Hence Rawls, by employing an *argument* from the burdens of judgment is expressing a commitment to this “faith”. While Rawls seems to be arguing in a “political” rather than “comprehensive” manner, the argument from the burdens of judgment show that he is still relying on reason (qua enlightenment liberalism)

these moral powers will take issue with Rawls’ conception of freedom. For example, Hobbesians will likely reject it, given that it presupposes people have a “capacity for a sense of justice” of the sort that Hobbes explicitly denies that any of us has.”

¹⁴⁸ Ibid., 167.

¹⁴⁹ Ibid., 173.

to yield moral truth. Thus Rawls must also admit that there are good and bad ways of reasoning, as shown by his rejection of certain sources of (unreasonable) disagreement.¹⁵⁰

Hampton's critique of Rawls' political liberalism and its associated methodology is detailed and complex, and in order to avoid not being able to do justice to her full argument, I choose to respond to three of her objections that I take to be salient. Firstly, Hampton is certainly right in saying that Rawls must reject all *modus vivendi* strategies in formulating his conception of liberalism that he hopes will be stable "for the right reasons", *modus vivendi* strategies being "...merely politically expedient, temporary, and contingent".¹⁵¹ And while it is correct that simply because people happen to accept certain ideas do not ipso facto generate a theory of justice, whether such a theory is liberal or not, it is wrong to say that such a starting point can only yield a mere *modus vivendi*. Whether the basis of toleration in a society is a mere *modus vivendi* or something more permanent and stable depends on the existence of a principled account of toleration (or political conception of justice) that all citizens have good reasons to accept, independent of their comprehensive moral convictions.

¹⁵⁰ Rawls, *Political Liberalism*, 55.: "...There are of course various explanations (of why conscientious attempt to reason with one another does not lead to reasonable agreement). We might suppose, say, that most people hold views that advance their own more narrow interests; and since their interests are different, so are their views. Or perhaps people are often irrational and not very bright, and this mixed with logical errors leads to conflicting opinions. But while such explanations explain much, they are too easy and not the kind we want."

¹⁵¹ Hampton, "The Common Faith of Liberalism," 165.

In fact, one can move further by saying that political philosophy can only begin productively with ideas and ideals that are held in common.¹⁵² That political liberalism, or a liberal account of toleration cannot be fully persuasive to say, Fascists, just because we do not share the same political society along with its fund of ideas, is not a weakness of the theory per se. It can be said that Rawls' political liberalism is addressed to a specific audience, the citizens of a functioning and relatively stable and peaceful liberal democracy.¹⁵³ In addition, political liberalism may still have something to say to non-liberal regimes in presenting an attractive, coherent understanding of what a society can hope to look, stable and united by a shared understanding of the public good. Also, it is not only imaginable but highly probable that a large majority of citizens within an actual liberal democratic society hold partially developed and incompletely understood notions like freedom and equality, concepts that can even be said to be shared by other illiberal political ideologies (like Fascism and Communism), and even their own reasonable comprehensive doctrines. The meaning and limits of such notions in actual political practice can perhaps be clarified by political philosophy, and I will elaborate on this in the next chapter.

Secondly, we can agree with Hampton that Rawls does in fact develop a particular conception of liberalism, and even his "political" liberalism requires at the very minimum, a decision on some potentially (but not necessarily)

¹⁵² See Dreben, Burton, "On Rawls and Political Liberalism," in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge, U.K.; New York: Cambridge University Press, 2002), 322–23.

¹⁵³ See Jonathan Quong, *Liberalism without Perfection*, 1 edition (Oxford; New York: Oxford University Press, 2011), 138–39. Compare John Rawls, *Lectures on the History of Political Philosophy*, ed. Samuel Freeman, First Edition (Cambridge, Mass: Belknap Press, 2007), 1.

controversial fixed points, like the possibility and nature of human agency and whether or not human beings have a normally functioning sense of justice, issues that a thinker like Hobbes will certainly dispute. Now it goes without saying that a Hobbesian will have fundamental disagreements with any liberalism based on a comprehensive account that is mutually exclusive with its own claims. But I think Rawls will reply, the way he wishes to be judged is by considering whether his exposition as a whole yields an attractive account of political justice¹⁵⁴, not simply by disputing his starting assumptions. An assessment of this nature is beyond the scope of my project; however if we agree with Rawls that this is the right way of judging his project, I believe many today will find assumptions of Hobbes' philosophy (e.g. his skepticism and materialism), not to mention the conclusion it leads to (monarchy) less attractive when judged as a whole. It is not clear that the burden of proof is squarely on the Rawlsian liberal when it comes to both bedrock assumptions, and defending the attractiveness of a liberal view considered as a whole. A brief reply to the Hobbesian will be attempted later, but for the moment I want to pursue a slightly different question: given the minimal notion of reason that liberals (Hampton included) supposedly affirm, can we arrive at something close to a consensus on at least some of the concepts, conceptions, and conclusions that underlie political life, assuming a certain shared history and society? The historical example of Christianity is evidence that such

¹⁵⁴ Rawls, *Justice as Fairness*, 5n5: "The exposition of justice as fairness starts with these familiar ideas....But because the exposition begins with these ideas does not mean that the argument for justice as fairness simply assumes them as a basis. Everything depends on how the exposition works out as a whole and whether the ideas and principles of this conception of justice, as well as its conclusions, prove acceptable on due reflection."

consensus is in principle possible. While Christian thinkers like Luther and Calvin have sometimes expressed intolerant views and acted in intolerant ways, there are a whole host of post-reformation Christian thinkers who have views that are compatible with and supportive of religious toleration, among them Locke and Bayle.¹⁵⁵

Thirdly, the supposed problem of Rawls' reliance on reason seems to be overstated. Hampton speaks favorably of Rawls' notion of public reason, but is not content with his avoidance of the notion of "truth". Rawls, as charged, is a philosopher engaging in a philosophical project, and philosophy implies the use of reason (in the ordinary sense stated above). Hampton, as a philosopher, is understandably uncomfortable about Rawls' lack of employment of the concept of truth. But Rawls need not eschew the ordinary employment of reason, and I think his conception of liberalism (and toleration) has considerable merits as compared to traditional liberal accounts. While a Rawlsian account of toleration may have very little to say to someone who is incapable or unwilling to engage in reasoning and discourse in the ordinary sense, it is fair to say that such a bar is low and can be met by most (if not nearly all) normally functioning citizens. The assumption that human beings are capable of engaging with each other in this manner seems to be a necessary condition of ordinary social and political life, not just in liberal regimes. It does however, take on special significance in the social life of a liberal democracy with its emphasis on public deliberation and justification.

¹⁵⁵ See Rainer Forst, *Toleration in Conflict: Past and Present* (Cambridge; New York: Cambridge University Press, 2013), 208–65.

Hampton's stronger objection targets the burdens of judgment. According to her, there are some suppressed steps in the argument from the burdens of judgment that when scrutinized, make the argument little different from traditional liberal defenses of political toleration.¹⁵⁶ Thus Hampton lists three ways to make the connection between the fact of reasonable disagreement and toleration: 1) the fact of reasonable disagreement shows that morality is complicated, and some moral theories grasp some aspects of it better than others, thus political society must allow many views in order that the full extent of morality can be pursued and understood, 2) the fact of reasonable disagreement means we must be epistemically humble, and hence refrain from suppressing views we cannot be sure are not right, and 3) the fact of reasonable disagreement is intrinsically good because it is a sign of a society of individuals reasoning independently and freely.¹⁵⁷ If Rawls relies on any of these three ways of clarifying the connection between the burdens of judgment and toleration, then the objection goes, he offers nothing really novel. But does he have to?

I believe that while all three ways of making the connection are compatible with Rawls' argument, he need not necessarily rely on any one. As previously argued, concepts implicit in the public political culture of a society like mutual respect and reciprocity can be ways of identifying a shared starting point. Crucially, such concepts are connected to, but need not refer to comprehensive doctrines, even liberal ones. Thus, saying that concepts like equality and freedom

¹⁵⁶ Hampton, "The Common Faith of Liberalism," 174.

¹⁵⁷ Ibid.: Hampton attributes these to Timothy Jackson (see n25).

has its roots in Christianity does not for that reason disqualify them as candidates for suitable political values, if it can be shown that they have independent validity. One way of doing this is to show that citizens already do have such notions, and they are publicly acknowledged regardless of the individual citizen's privately held comprehensive doctrine. To the extent that such an attempt is successful, Rawls does have a novel and important contribution to make: his innovation is not in coming up with an entirely brand new conception of liberal justice or values, but attempting to distill them into a minimal political account that can appeal to all (at least potentially). So long as particular conceptions affirm the same general principles (including toleration), political liberalism need not pass judgment on *how* they are arrived at within a comprehensive doctrine, whether from certain lines of argument or bedrock principles. Also, it is important to note that the burdens of judgment as identified by Rawls are not to be further justified with reference to a doctrine that is more basic, even though it bears great resemblance to a kind of epistemological fallibilism.¹⁵⁸ It is easy to see how this would be unacceptable, given that there can be reasonable disagreement on this matter. Rather, it is not far-fetched to see that the burdens of judgment can be arrived at by reflecting upon the functioning of ordinary human reason. If this is the case, then accepting them will similarly be relatively uncontroversial.

Needless to say, it would be desirable that liberalism can provide a principled reply to Hobbesians regarding the basis for toleration on terms they could not reasonably reject, but it may not be possible to do so, at least not one

¹⁵⁸ Rawls, *Political Liberalism*, 62.

that is consistent with their metaphysics. But this does not mean that no answer can be given that can satisfy them on *some* of their own terms, and it may be sufficient for liberals that Hobbesians, should they exist in political society, are willing to tolerate others for whatever reasons they find to be compelling ones. It may be less important that one believes, along with Hobbes, that human beings are incapable of a sense of justice, than that one ought to act in a just manner in social life.

The basis of toleration in *The Liberalism of Fear*

While some conceptions of liberalism have comparatively deep and comprehensive groundings, considerations of certain human concerns that are less deep and more broadly shared can in fact yield similar conclusions. One such attempt at an ecumenical and “political” liberalism is made by Judith Shklar in her influential essay *The Liberalism of Fear*. For Shklar, liberalism refers to a political doctrine¹⁵⁹ with one overriding aim: to secure the political conditions that are necessary for the exercise of personal freedom. The original and only defensible meaning for liberalism is that:

“Every adult should be able to make as many effective decisions without fear or favor about as many aspects of her or his life as is compatible with the like freedom of every adult...It is a *political* notion, because the fear

¹⁵⁹ Shklar’s use of “doctrine” differs from Rawls’, although it is very much similar in spirit to Rawls’ notion of a “political conception”.

and favor that have always inhibited freedom are overwhelmingly generated by governments...”¹⁶⁰ (emphasis mine)

While there are many sources of social oppression, “none has the deadly effect of those who, as agents of the modern state, have unique resources of physical might and persuasion at their disposal.” Shklar observes that liberalism thus understood has been “very rare both in theory and practice in the last two hundred odd years”.¹⁶¹ Like Rawls, Shklar repeatedly emphasizes that liberalism does not have to depend on specific religious or philosophical systems of thought, and does not have to choose among them, so long as they do not reject toleration.¹⁶² It is “not necessarily linked to any one religious or scientific doctrine, though it is psychologically more compatible with some rather than others.” Atheism, agnosticism, relativism and nihilism are not *logically* entailed by the acceptance of political liberalism, but may be psychologically compatible with it.¹⁶³ However, it must only reject those doctrines that do not acknowledge a distinction between the personal and the public.¹⁶⁴ The version of liberalism that Shklar favors (“the liberalism of fear”) draws heavily on “a strongly developed historical

¹⁶⁰ Judith N. Shklar, “The Liberalism of Fear,” in *Liberalism and the Moral Life*, ed. Nancy L. Rosenblum (Cambridge, Mass.: Harvard University Press, 1991), 21.

¹⁶¹ Ibid., 22. “...let us not forget that the United States was not a liberal state until after the Civil War, even then often in name only. In short, to speak of a liberal era is not to refer to anything that actually happened, except possibly by comparison to what came after 1914.”

¹⁶² Ibid., 24, 26, 30.

¹⁶³ It is worth noting that atheism, agnosticism and nihilism can be compatible with extremely illiberal or authoritarian doctrines as well – some varieties of Communism practiced in the 20th century come to mind. Neither do the above religious and moral positions *necessarily* entail political liberalism, and vice versa. See Ibid., 25: “A society governed by extremely oppressive skeptics can be easily imagined if, for example, they were to follow Nietzsche’s political notions energetically. That is also true of the natural sciences...it is not impossible to imagine a science friendly dictatorship.”

¹⁶⁴ There is an important analogy (or perhaps intellectual precedence) in the separation of church and society, or church and state in the Christian context. Leonard Verduin and Franklin H. Littell, *The Reformers and Their Stepchildren* (Paris, Ark.: The Baptist Standard Bearer, 2001), 38–39.

memory”, a memory of the brutality of torture and horrors of war, rather than the possibilities of intellectual and moral progress. It is concerned with the asymmetry of power between the military, police, and government, and on the other side, individuals. The recognition of the asymmetry of power between the individual citizen and the state, the potential for abuse, and the need to protect the weak are thus the main concerns for the liberalism of fear:

“Given the inevitability of that inequality of military, police, and persuasive power which is called government, there is evidently always much to be afraid of. And one may, thus, be less inclined to celebrate the blessings of liberty than to consider the dangers of tyranny and war that threaten it. For this liberalism the basic units of political life are not discursive and reflecting persons, nor friends and enemies, nor patriotic soldier citizens, nor energetic litigants, but the weak and the powerful.”¹⁶⁵

The particular kind of freedom that it hopes to secure is the freedom from abuse of power and intimidation of the defenseless.¹⁶⁶ For Shklar, the assumption amply justified by political history is that some agents of the government will behave lawlessly and brutally most of the time unless they are prevented from doing so.¹⁶⁷ In addition, the liberalism of fear does not offer a *summum bonum* toward which all political agents should strive, but *begins* with a *summum malum* that all would avoid if they could, the evil of cruelty and the fear it inspires.¹⁶⁸ It is

¹⁶⁵ Shklar, “The Liberalism of Fear,” 25.

¹⁶⁶ Ibid., 27.

¹⁶⁷ Ibid., 28.

¹⁶⁸ Ibid., 29: “To that extent the liberalism of fear makes a universal and especially a cosmopolitan claim, as it historically always has done....”

focused on cruelty not as a person inclination, but that which results from the differences in public power, and systematic fear which makes freedom impossible, not the healthy fear of avoidable pain. However, Shklar herself acknowledges that “putting cruelty first” is an insufficient basis for political liberalism¹⁶⁹, but merely a starting point. What is necessary is to move from an intuition that has immediate psychological appeal to something that can be a principle of political morality, and one way this can be achieved is by:

“...asking whether the prohibition would benefit the vast majority of human beings in meeting their known needs and wants. Kantians and a utilitarian could accept one of these tests, and liberalism need not choose between them.”¹⁷⁰

Whether or not we agree that the test just mentioned will in fact be fully acceptable to Kantians and Utilitarians (also, people of many other moral and religious persuasions), it seems that avoiding the evils mentioned by Shklar are at least a necessary condition of any kind of life minimally worth living. One example is instructive, what Shklar calls “the most reliable test”: to know whether a cruelty is to be endured or not, one is to ask the likeliest victims, the least powerful persons, under controlled conditions.¹⁷¹ At the very least, if a series of such questions can be answered in the affirmative by citizens of different

¹⁶⁹ See Judith N. Shklar, “Putting Cruelty First,” *Daedalus* 111, no. 3 (1982): 17–27: I am unable to discuss this very complex issue here, but Shklar’s point is that for Christians (not to mention other groups), cruelty is not the worst of sins: different groups may have a differing comprehensive moralities which rank cruelty lower.

¹⁷⁰ Shklar, “The Liberalism of Fear,” 30.

¹⁷¹ *Ibid.*, 35.

comprehensive beliefs, then an important step has been taken in the direction of a shared political point of view. It seems to be the case that the minimal assumptions of liberals concerning human nature (for political purposes) need not be wholly unacceptable to people with strong convictions on the subject. This is achieved by focusing on certain observable social facts that are politically relevant¹⁷²:

“For political purposes liberalism does not have to assume anything about human nature except that people, apart from similar physical and psychological structures, differ in their personalities to a very marked degree....some people will be encumbered with group traditions they cherish, while others may only want to escape (from them)...These socially very important aspects of human experience are...extremely diverse and subject to change. Social learning is a great part of our character, though the sum of all our roles may not add up to a complete “self”. *For political purposes it is not this irreducible “self” or the peculiar character that we acquire in the course of our education that matter, but only the fact that many different “selves” should be free to interact politically.*”¹⁷³ (emphasis mine)

It is noteworthy, perhaps even crucial that Shklar repeats the following point which shows a certain kinship to Rawls’ political liberalism: that liberalism does

¹⁷² Of course the selection and interpretation of those facts, and whether such a state of affairs is to be lamented or not cannot be made fully persuasive to absolutely everyone; nonetheless, this is not a significant weakness.

¹⁷³ Shklar, “The Liberalism of Fear,” 35.

not have to depend on specific religious or philosophical systems of thought, and it does not have to choose among them so long as they do not reject toleration.¹⁷⁴ Shklar rejects “relativists” who claim that the liberalism of fear judges inherited standards by alien standards that are purported to be universal, and thus “an arrogant imposition of false as well as partial principles.”¹⁷⁵ Against the latter, she argues that even people of a very different culture have similar concerns regarding cruelty and a minimally secure life.¹⁷⁶

But perhaps some critics will accuse her of falling back into the same trap as Rawls and others when she says the following: “Only the challenge from nowhere and the claims of universal humanity and rational argument cast in general terms can be put to the test of general scrutiny and public criticism.”¹⁷⁷ In stating her case in this way, would she have presupposed a point of view that is more involved than is desirable, as it may imply a privileging of reason over tradition? Although we cannot speak for Shklar, I believe her argument as a whole can be understood in such a way that is defensible from the standpoint of Rawlsian toleration. A case in point is the notion of fear she relies on to make her

¹⁷⁴ Ibid., 24: “...the liberalism of fear as a strictly political theory is **not necessarily linked to any one religious or scientific doctrine**, though it is psychologically more compatible with some rather than with others. It must reject only those political doctrines that do not recognize any difference between spheres of the personal and the public.” Again on 25: “The liberalism of fear is thus **not necessarily tied to either skepticism or to the pursuit of the natural sciences....**”, cf. *ibid.* the less sanguine “...a **society of believers who choose never to resort to the use of the agencies of government to further their faith is imaginable**, though not usual.”; “A society governed by extremely oppressive skeptics can be easily imagined if, for example, they were to follow Nietzsche’s political notions energetically....” Also 26: “Liberalism **need not decide among traditions that are not hostile to its aspirations, nor does it have to regard the claims of any traditions inherently false**, simply because it does not meet scientific standards or rational proof.” (emphases mine)

¹⁷⁵ Ibid., 34.

¹⁷⁶ Ibid. “The Chinese did not really like Mao’s reign any more than we would, in spite of their political and cultural distance from us.”

¹⁷⁷ Ibid.

case: it is not a metaphysical fear of the unknown that forms the bedrock of Hobbes' philosophy¹⁷⁸, but something widely acknowledged to be an evil, if not an exclusive, then at least an especially salient concern for citizens living in a modern state. Such a notion of fear is easily understood and its significance can be appreciated, independent of liberal or non-liberal comprehensive doctrines. Thus Shklar's strategy, like Rawls' political liberalism, yields an attractive, principled argument for toleration and its limits. The crux once again lies in identifying and working from publicly acknowledged shared values to arrive at a conception of toleration through ordinary human reason.

Conclusion

Liberals like Shklar and Rawls can thus respond in the following manner to the concerns raised at the beginning of this chapter: as shown, liberalism is not based on relativism or skepticism, but on a set of widely shared substantive political values. Because of this it can yield a principled account of toleration, and not a mere *modus vivendi*. These substantive political values (examples previously discussed include mutual respect and reciprocity) can be specified independently of comprehensive doctrines, they can in principle be acceptable to citizens with a broad range of religious and philosophical convictions, some of which are mutually incompatible. Rawls thus looks to the public political culture of a liberal democracy for this independent basis, in which such ideas already exist in a nascent form, and to a good extent regulate the relations between

¹⁷⁸ See Jan H. Blits, "Hobbesian Fear," *Political Theory* 17, no. 3 (1989): 417–31.

citizens. Furthermore, these substantive political values will be strengthened to the extent that they can be supported from within a citizen's own comprehensive conception of the good. A conception of liberal toleration in the Rawlsian spirit is not irredeemably hopeful but cautiously optimistic, appealing to common ground in light of reasonable disagreement regarding the good, while garnering support from doctrines that are potentially in conflict with each other. Against Hampton, Rawls' general methodology and his employment of reason is not unacceptable but ordinary, and does have comparative merit over traditional liberal accounts. In the next chapter I will attempt to highlight some aspects of Rawls' view of political philosophy, and discuss the relationship between principled and *modus vivendi* arguments for toleration.

5. Toleration between Respect and Fear

Introduction

In the preceding chapters I developed and defended a Rawlsian conception of toleration. A key element in such a conception is the “burdens of judgment”, features of the normal functioning of ordinary human reason that leads not to a convergence on a single comprehensive doctrine, but instead, reasonable pluralism. The burdens of judgment account for why disagreement is likely to persist even in the case of reasonable citizens exercising their reason sincerely and conscientiously. The next step involves making a connection between the burdens of judgment and the conclusion of toleration: citizens owe each other a moral duty of fairness, specified in terms of mutual respect and reciprocity. This is what makes the account of toleration distinctively *liberal*. I argued that such a Rawlsian conception of liberal toleration is suitable one, given the desiderata. I then tried to show what it means to accept such a conception of toleration in controversial cases like physician-assisted suicide, and provided a response against the objection that it is no different from traditional defenses of liberalism and toleration. Yet the following worry remains from our previous chapter: Is Shklar’s “liberalism of fear” (and for that matter, a Rawls’ political liberalism) more like a *modus vivendi* than a principled argument for toleration? Secondly, following Glaucon in Plato’s Republic, why would anyone, or any group that is in a position of power or majority be willing to tolerate the weaker party, especially if one believes that his moral convictions are not just reasonable but also true? Is it not too optimistic to assume that citizens are in great part reasonable? Does the

“liberalism of fear”, or even a principled conception of toleration have anything to say to citizens who refuse to tolerate others, when it would be right to do so?

In this chapter, I want to argue that a conception of toleration that is Rawlsian in spirit can be sustained – that is to say, as far as possible, accepting as many lines of reasoning which support its conclusion of mutual toleration that exist, some of which are mutually incompatible; its ecumenism is a strength rather than a weakness. This implies that we accept toleration in a sense “between respect and fear”, on the one hand looking towards and being supported by a principled account that is based on broadly shared political values, but on the other, always being aware of the lessons of political history and the need to address basic realities of human existence. Considerations of self-interest ought not be denigrated as they can have persuasive force when shared principles are weak or non-existent, and thus can be an important first step. Yet to remain within a *modus vivendi* is less than ideal, and wherever possible we ought to work out more fully and affirm a conception of toleration that is based upon shared political values. Also, having an appreciation of what Rawls considers to be the methods and roles of political philosophy may shed some light on what it can achieve, and in concluding my paper, I hope to make some speculative remarks with regards to this.

One suggestion for an answer to the first concern may look like this: the initial appeal of the liberalism of fear does indeed owe much to considerations of self-interest, and the systematic fear that an individual *himself* does not want to experience. But Shklar’s discussion does not simply remain at this level: the step

of applying a test which is acceptable to citizens of a broad range of comprehensive persuasions attempts to transform what resembles a *modus vivendi* into a principled conception of liberalism (and toleration). To repeat, beginning with fear is not necessarily to end with it. In comparison, for Rawls, to develop a coherent political conception based on publicly affirmed political values fulfills the same function: such a conception is a moral one, and moreover, can be affirmed from within a variety of comprehensive moral and religious doctrines.¹⁷⁹ A society whose public consciousness and identity is informed by such a conception would have moved quite far from the baseline of an armistice. To be sure, posing the question of whether such a society has already (or ever) been fully attained in actual political life may incline us to pessimism. But the fact that many such attempts have been, and continue to be made by a variety of citizens should give us some hope.

Rawls' understanding of political philosophy and the role of reconciliation

A brief examination of how Rawls conceives of political philosophy can perhaps strengthen our response to some of the objections raised thus far. For Rawls, political philosophy does not have special access to fundamental truths or ideas of justice and the common good; rather, by study and reflection it may elaborate deeper and more instructive conceptions of basic political ideas that

¹⁷⁹ To raise a possibility, Mill's "harm principle" may fit such a criterion. Compare John Rawls, *Political Liberalism* (New York: Columbia University Press, 2005), 340–56; Chin Liew Ten, "Religious Diversity, Toleration, and Interaction," in *Religious Diversity in Singapore*, ed. Lai Ah Eng (Institute of Southeast Asian Studies, 2008), 566: "There are notions of harm, such as those inflicted by physical violence, disruptions of public order, and invasions of personal liberty, which all can acknowledge."

help us clarify our judgments about public institutions.¹⁸⁰ Political philosophy implicitly invokes the authority of human reason, and this is simply the shared powers of reasoned thought, judgment and inference as exercised by any fully normal person beyond the age of reason.¹⁸¹ This reason is exercised by all citizens when they address each other in a reasonable and conscientious manner on all questions, not just political ones.¹⁸² Thus striving for such credentials of human reason does not distinguish political philosophy from any other kind of ordinary reasoned discourse (and I believe we can infer, not just limited to philosophical discourse).¹⁸³

Political philosophy can play a role both in what is termed the “background culture” of a society, as well as its public political culture.¹⁸⁴ In the background culture, political philosophy can play an educative role, offering certain ideal conceptions of person and political society before they come to politics: through examining the classic texts of the tradition of political thought,

¹⁸⁰ John Rawls, *Lectures on the History of Political Philosophy*, ed. Samuel Freeman, First Edition (Cambridge, Mass: Belknap Press, 2007), 1.

¹⁸¹ Richard Rorty, “The Priority of Democracy to Philosophy,” in *Objectivity, Relativism, and Truth: Volume 1: Philosophical Papers* (Cambridge ; New York: Cambridge University Press, 1990), 175: “Thomas Jefferson set the tone for American liberal politics when he said “it does me no injury for my neighbor to say that there are twenty Gods or no God.” His example helped make respectable the idea that politics can be separated from beliefs about matters of ultimate importance – that shared beliefs among citizens on such matters are not essential to a democratic society. Like many other figures of the Enlightenment, Jefferson assumed that a moral faculty common to the typical theist and the typical atheist suffices for civic virtue.”

¹⁸² Rawls, *Lectures on the History of Political Philosophy*, 2.

¹⁸³ John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly, 2nd edition (Cambridge, Mass.: Belknap Press, 2001), 92: “All ways of reasoning – whether individual, associational, or political – must accept certain common elements: principles of inference and rules of evidence; they must incorporate the fundamental concepts of judgment, inference, and evidence, and include standards of correctness and criteria of truth. Otherwise they would not be ways of reasoning but something else: mere rhetoric or artifices of persuasion.” See also Joshua Cohen, “Truth and Public Reason,” *Philosophy & Public Affairs* 37, no. 1 (2009): 2–42.

¹⁸⁴ Rawls, *Political Liberalism*, 14.

political philosophy provides a source of essential political principles and ideals, and in a constitutional democracy, plays a role in strengthening the roots of democratic thought and attitudes. In the public political culture of society, Rawls distinguishes four roles that political philosophy can play. Two are especially important, and I limit myself to discussing them in greater detail here: they are respectively, *orientation* and *reconciliation*.

According to Rawls, the role of orientation

“...is one of reason and reflection. Political philosophy may contribute to how a people think of their political and social institutions as a whole, of themselves as citizens, and of their basic aims and purposes as a society with a history – a nation – as opposed to their aims and purposes as individuals, or members of families and associations.”¹⁸⁵

How then does political philosophy contribute to how individuals understand their collective identity as citizens? One possible way is in working out a coherent conception of political justice that can serve as part of a citizen’s self-understanding. Rawls’ own political liberalism is an attempt at working out how the various concepts such as freedom, equality, reasonableness etc. relate to each other in a unified framework. It proposes a way for individual citizens to conceive of themselves qua citizens (as each having two moral powers developed to a sufficient degree, a sense of justice etc.), and in relation to society as a whole.

¹⁸⁵ Rawls, *Justice as Fairness*, 3: “The idea is that it belongs to reason and reflection (both theoretical and practical) to orient us in the (conceptual) space, say, of all possible ends, individual and associational, political and social.”

This self-understanding may already exist in nascent form implicit in actual social and political interactions, but making them explicit in a coherent account of political justice that is publicly available has potentially great value in many respects.¹⁸⁶ In conceiving of political society as a “social union of social unions” with distinctive and independent norms and values, political philosophy can help us go beyond narrow individual interests and associations united on comprehensive conceptions of the good.¹⁸⁷ In addition, Rawls’ own conception also tries to help us negotiate the relationship between our own comprehensive doctrines and the demands of political justice by showing that they are potentially compatible.¹⁸⁸

The next role is that of reconciliation,

“...stressed by Hegel in his *Philosophy of Right* (1821)...political philosophy may try to calm our frustration and rage against our society and its history by showing us the way in which its institutions, when

¹⁸⁶ See John Rawls, “Kantian Constructivism in Moral Theory,” in *Collected Papers*, ed. Samuel Freeman, Revised ed. edition (Harvard University Press, 2001), 322–27.

¹⁸⁷ John Rawls, *A Theory of Justice* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1999), 456–64. Cf. Rawls, *Justice as Fairness*, 94: “...political liberalism does not view political society as an association. Quite the contrary, it insists on the distinction between a political society and an association. Associations within society can be communities united on shared final ends; indeed this is essential: were it not the case social life would lose its point.”

¹⁸⁸ Consider what Rawls calls “reasoning from conjecture” in Rawls, *Political Liberalism*, 462: “we reason from what we believe, or conjecture, may be other people’s basic doctrines, religious or philosophical, and seek to show them that, despite what they might think, they can still endorse a reasonable political conception of justice. We are not ourselves asserting that ground of toleration but offering it as one they could assert consistent with their comprehensive doctrines.”

properly understood, from a philosophical point of view, are rational, and developed over time as they did to attain their present, rational form.”¹⁸⁹

For instance, “the fact of profound and irreconcilable differences in citizens’ reasonable comprehensive religious and philosophical conceptions” is not always easy to accept.¹⁹⁰ However, if we are suitably reconciled in this manner, “...we are to accept and affirm our social world positively, not merely be resigned to it.”¹⁹¹ Political philosophy achieves this reconciliation by “...showing us the reason and indeed the political good and benefits of it.”¹⁹² Once again, I believe this can be done in a way that avoids contentious metaphysical doctrines of say, a Hegelian philosophy of history.¹⁹³ But then, how exactly is this to proceed? One interesting example that echoes Rousseau of *Du Contrat Social*¹⁹⁴ is Rawls’ discussion on the “outer limits of our freedom”, in which he attempts to distinguish between public and non-public reason.¹⁹⁵ Political society, is to be distinguished from private associations in part because the power of the government is so pervasive, and can only be evaded by leaving the state’s territory.¹⁹⁶ Because the bonds of society and culture begin to shape our lives

¹⁸⁹ Rawls, *Lectures on the History of Political Philosophy*, 10. See also Rawls, *Justice as Fairness*, 3–4: “This fits one of Hegel’s well-known sayings: ‘When we look at the world rationally, the world looks rationally back.’”

¹⁹⁰ Rawls, *Justice as Fairness*, 3.

¹⁹¹ *Ibid.*, 3–4.

¹⁹² *Ibid.*, 4.

¹⁹³ It is important to note that there must be limits to how reconciliation is to be understood, otherwise it may be unacceptable to those who hold certain comprehensive doctrines. Consider the Christian, who believes that he/she is ultimately not “at home in the world”; he/she is still awaiting a final reconciliation with the creator. Such a citizen can still understand the process of reconciliation in a suitably non-eschatological manner, consistent with his/her comprehensive doctrine, and perhaps even supported by it.

¹⁹⁴ Jean-Jacques Rousseau, *“The Social Contract” and Other Later Political Writings*, ed. Victor Gourevitch (Cambridge: Cambridge University Press, 1997), 41.

¹⁹⁵ Rawls, *Justice as Fairness*, 92–94.

¹⁹⁶ *Ibid.*, 93.

from the moment of birth, and we can only leave it with great difficulty, we cannot be said to freely accept the state's authority in that sense. Nevertheless, we may come freely to accept the terms of political life as the outcome of reflective thought and judgment, mediated by a political conception of justice.¹⁹⁷

Political philosophy accomplishes this not by conclusive argument¹⁹⁸, but in part by selecting relevant facts that fit into a “highly stylized history” in accordance with a normative theory of justice.¹⁹⁹ Rawls candidly describes his own attempt at describing the historical origins of liberalism as “a philosopher’s schematic version of speculative history”²⁰⁰ that runs as follows:

“...the Reformation and the religious wars of the sixteenth and seventeenth centuries ending with, at first reluctant acceptance of the principle of toleration and liberty of conscience; the gradual taming of royal power by the rising middle classes and the establishment of constitutional regimes of limited monarchy; and the winning of the working classes to democracy and majority rule.”²⁰¹

¹⁹⁷ Consider Immanuel Kant, “Idea for a Universal History with a Cosmopolitan Purpose,” in *Kant: Political Writings*, ed. H.S. Reiss (Cambridge University Press, 1991), 41–53; Georg Wilhelm Friedrich Hegel, *Hegel: Elements of the Philosophy of Right*, ed. Allen W. Wood, trans. H. B. Nisbet, Revised ed. edition (Cambridge University Press, 1991), 20–23.

¹⁹⁸ Cf. Rawls, *Political Liberalism*, 53.

¹⁹⁹ Jan-Werner Müller, “Rawls, Historian : Remarks on Political Liberalism’s ‘Historicism,’” *Revue Internationale de Philosophie* No 237, no. 3 (n.d.): 327–39: “we view the past (but not just the past) through the filter of an already existing construction of justice.” Cf. Rawls, *Political Liberalism*, 122: “Apart from a reasonable moral or political conception, facts are simply facts. What is wanted is a framework of reasoning within which to identify the facts that are relevant from the appropriate point of view and to determine their weight as reasons.” Also Rawls, *Lectures on the History of Political Philosophy*, 11n19.

²⁰⁰ Rawls, *Lectures on the History of Political Philosophy*, 11n9.

²⁰¹ Ibid. Compare Rowan Williams, “Religion, Diversity and Tolerance,” in *Faith in the Public Square* (Bloomsbury Continuum, 2015), 76–78.

For some the mention of “selective history” immediately triggers an alarm, and Rawls himself warns against ideology in Marx’s sense, the corrupt defense of an unjust and unworthy status quo.²⁰² Such a history is not meant to simply be a triumphalist vindication of the present age: Rawls clearly acknowledges that the reality today may still fall short of the ideal that is assumed in the speculative history (and theory of justice).²⁰³ A more accurate assessment I believe, is that it highlights the possibilities revealed through actual human history, some of which were unavailable in former ages.²⁰⁴ Thus a speculative history stands in between political reality and political theory: on the one hand, it identifies elements from actual history that can serve as a beginning for a theory of justice, and on the other, it serves as a kind of inspiration by providing an account of justice that we can aim towards.²⁰⁵ It is neither to offer an apology for a status quo that is manifestly unjust, nor an undying optimism that ignores the problems of social life. Rather, political philosophy allows us to arrive at a common reasonable agreement on the standards by which we are to judge the justice of political institutions, and on this basis to tell when things are going awry. Standing in relation to each other as citizens in public life is thus to express a kind of civic

²⁰² Rawls, *Justice as Fairness*, 4n4.

²⁰³ Rawls, *Lectures on the History of Political Philosophy*, 11–12. Charges that Rawls is an apologist for American liberalism could not be further from the truth. Indeed, if some of his claims are taken seriously, they are a strong indictment of the injustice of the current American political system.

²⁰⁴ Rawls, *Political Liberalism*, xxi–xxvi.

²⁰⁵ I owe this point to Müller.

friendship that is grounded in shared political values, not merely to coexist uneasily in a kind of *modus vivendi*.²⁰⁶

The way in which we conceive of political philosophy potentially has very deep implications for how we assess the attractiveness and success of any attempt at a theory of justice, not only liberal theories. What becomes clear from the above discussion is that political philosophy as conceived by Rawls, at least on his own terms, is to be judged as an entire theory and not simply to be undermined by disagreeing with supposedly foundational assumptions. If we agree with Rawls, judging the worthiness and value of a particular political philosophy is a far more complex matter. We see this complexity in what Rawls takes to be two important roles of political philosophy, namely, orientation and reconciliation. If a *modus vivendi* is characterized exclusively or primarily by considerations of self-interest, then Rawls' political liberalism is not a mere *modus vivendi*. Thus, to reduce Rawls' political liberalism to a mere *modus vivendi* account of justice is to pay insufficient attention to these aspects of his project. Of course, one can respond by arguing that political philosophy ultimately fails to fulfill these roles, or that an alternative conception of political philosophy (hopefully, not mere rhetoric or deception) proves to be superior. But I

²⁰⁶ Rawls acknowledges that reconciliation by way of political liberalism has its limits. See Rawls, *Political Liberalism*, lviii: "Political liberalism mitigates but cannot eliminate the first kind of conflict, since comprehensive doctrines are, politically speaking, unreconcilable and remain inconsistent with one other. However, the principles of justice of a reasonably just constitutional regime can reconcile us to the second kind of conflict. For once we accept principles of justice, or recognize them as at least reasonable (even though not as the most reasonable), and know that our political and social institutions conform to them, the second kind of conflict (i.e. from different status, class position, occupation, ethnicity, gender, and race) need no longer arise, or arise so forcefully."

believe, if we examine the more programmatic aspects of Rawls' philosophy, some more obvious objections can be easily answered, as we have shown.

Respect and Fear

“...toleration and its awkward practices are likely to remain both necessary and in some degree possible. If so, it will be all the clearer...that the practice of toleration has to be sustained not so much by a pure principle resting on a value of autonomy as by a wider and more mixed range of resources.”²⁰⁷

I now want to consider the relationship between *modus vivendi* arguments (which are significant and important) and principled arguments for toleration like Rawls'.

I want to propose a strategy to navigate between the two kinds of argument for toleration. Such a strategy is hardly novel, and I take it to be consistent with the spirit of Rawls' political liberalism. Roughly stated, we need not settle on one single argument which grounds political toleration; instead we can accept a family of such arguments, so long as they support the desired conclusion of toleration.

Whether it be a principled argument in the form of political liberalism understood in terms of mutual respect, or pragmatic considerations appealing to self-interest, it seems to be a *prima facie* possibility that the two kinds of arguments can be made in a mutually consistent manner, whether in a single society or a single person. As previously discussed in chapter 1, each broad category of argument has its weaknesses and strengths: in light of the starting point of reasonable

²⁰⁷ Bernard Williams, “Toleration: An Impossible Virtue?,” in *Toleration: An Elusive Virtue*, ed. David Heyd (Princeton, NJ: Princeton University Press, 1996), 26–27.

pluralism, principled arguments for toleration have to be acceptable to all in order for them to be effective, and thus many conceptions which only appeal to particular principles that do not have broad appeal are unsuitable. In comparison, pragmatic arguments seem to have broader appeal, if only they speak to something more basic, to fear and self-interest. However, the strength of such arguments, and the stability of toleration that it procures is contingent upon the balance of power and interests between different groups and individuals in society, and such conditions are vulnerable to change, sometimes quickly and imperceptibly. Yet very often a long and lasting peace begins with an armistice, and thus we ought not underestimate the role that pragmatic considerations play in the initial stages of society before political values and an idea of citizenship can take hold. Even if we live in a society where there is already broad and deep public consensus on political values and the duties and obligations of citizenship, we do well to bear in mind the kinds of considerations which predominate in a *modus vivendi* type situations, considerations that can reassert themselves should the social compact erode significantly.

There are then at least two ways in which pragmatic arguments can complement principled ones: firstly, given that the two kinds of argument are ultimately not mutually exclusive, they can both support the same conclusion of toleration through different lines of argument. The two kinds of argument appeal to different starting points that can (and do in reality) exist together: respectively a concern with, and desire to secure the basic conditions of life for oneself, and also the ability and willingness to cooperate socially on the basis of shared political

values. Secondly, as highlighted by Rawls, pragmatic arguments, just like justifications from within comprehensive doctrines can in fact lead to more enduring and stable types of principled toleration, once conditions become favorable for such a movement.²⁰⁸ One example serves to drive this home. Consider the initial state of enmity between the Catholics and Protestants in the religious wars of the 16th century, cited by Rawls as the paradigmatic example of a *modus vivendi*. In this case, both parties held that it was the duty of the ruler to uphold the true religion and repress the spread of heresy.²⁰⁹ As long as their relative power vis-a-vis each other remained roughly equal, the calculus of party interests led them to mutually tolerate each other. However, should either party fully gain its way, it would impose its own comprehensive doctrine as the sole admissible faith.²¹⁰ Such a state of affairs is not ideal, for reasons previously discussed. Despite this, in a society characterized by such a *modus vivendi*, the toleration secured²¹¹ can still play an important role in quieting divisiveness and encouraging social stability, even if it is only a veneer. As Rawls stresses, even if religious toleration begins out of self-interest, a reasonably successful political arrangement that endures will gradually win the allegiance of citizens, moving beyond concerns of mere self-interest.²¹² Political philosophy can play a crucial role in bringing this about.

²⁰⁸ Rawls, *Lectures on the History of Political Philosophy*, 8.

²⁰⁹ Rawls, *Political Liberalism*, 148.

²¹⁰ *Ibid.*, 459.

²¹¹ I do not discuss public reason in depth, but it is obvious how a Rawlsian conception of toleration can play a similar role.

²¹² Rawls, *Lectures on the History of Political Philosophy*, 8; See also John Rawls, *The Law of Peoples: with "The Idea of Public Reason Revisited,"* Revised ed. (Harvard University Press, 2001), 112–13.

Mutual toleration thus represents a kind of minimum in our idea of a just and stable society: a society in which the relationships between people and groups are characterized only (or chiefly) by mutual toleration is not ideal, but one could surely do a lot worse. In the same way, pragmatic arguments for toleration are our arguments of last appeal: if arguments of principle are exhausted or in the final analysis unpersuasive, the more “visceral” considerations of the possibility of mutual bloodshed need to be driven home. That they secure the conclusion of mutual toleration from instrumental considerations ought not detract from their political, historical and psychological importance. In even more stark terms, what is instrumentally secured is collectively speaking, life and the conditions of existence itself. Without the latter, one could not speak about anything else, let alone the good life.

Let us now recall that one of the original motivations to search for a principled conception of toleration is that *modus vivendi* type justifications are insufficiently stable. One such objection centers on the basis for such toleration: if the balance of power or calculus of perceived costs to benefits of coercive interference changes significantly, then it may no longer make sense for the now more powerful group to tolerate the weaker one. Yet the argument for toleration is addressed primarily to the party who is to tolerate. In the case of Shklar’s liberalism of fear, it is addressed to the powerful. Why then, to reprise Glaucon’s question, should the powerful have to honor such terms?

It should not surprise us that I have little more to say to this group, and my response may come as a disappointment. But even the more powerful group is

subject to the same background condition, namely, the fact of reasonable pluralism. If this is so, they ought to be able to appreciate the advantages of a liberal conception of toleration: given our circumstances, this may be our best shot at a peaceful coexistence. Similarly, Hobbesians who reject the reasonableness of citizens are still primarily concerned about security. From their concern for security, Hobbesians have a strong reason to support the practice of toleration. In brief, our cause is far from lost.

Conclusion

Returning to Rousseau's statement, does "theological intolerance" necessarily lead to "civil intolerance"? Is it in fact impossible to "live in peace" with those who one believes to be "damned"? A closer inspection of Rousseau's proposed solution in *Du Contrat Social* shows that Rousseau may in fact agree with the modern liberal solution. The notion of a civil religion may not please Atheists nor Christians: it is far too much for the atheist, and far too austere for the Christian. However, leaving aside its positive dogmas²¹³, the rationale of why there must be a civil religion comes very close to the Rawlsian concern for preserving the necessary conditions social and political life. The purely "civil profession of faith", Rousseau writes, are:

“...not precisely...dogmas of Religion but...sentiments of sociability, without which it is impossible to be either a good citizen or a loyal subject...the sovereign may banish from the State anyone who does not

²¹³ Rousseau, *Rousseau*, 150–51.

believe them...not as impious but as unsociable, as incapable of sincerely loving the laws, justice, and if need be of sacrificing his life to his duty.”²¹⁴

Thus, even though Rousseau proposes to curtail the expression of certain religious opinions, it is noteworthy that he limits the negative dogmas of his proposed civil religion to a single one, intolerance. All things considered, it is not difficult to believe that he can be persuaded to accept a liberal conception of toleration.

The idealizing assumptions of political philosophy are sometimes criticized as being unrealistic. It would indeed be naïve to assume that deep seated racial, religious, and cultural tensions will ever be fully resolved, at the very least not in the near future. As such, we must never discount the real possibility that certain kinds of irrational beliefs and fears may lead to intolerant behavior. Here we have perhaps arrived at not just the limits of toleration or liberalism, but the limits of philosophy and rational discourse. But before we reach this point, there is much to be said and argued. Ultimately, the horizon of political philosophy is not simply about the just, but the good life. If indeed we are able to pursue and actualize our cherished life goals while on the one hand living in peace and mutual respect, and on the other, without giving up our substantive moral convictions, we would have collectively achieved a great good.

²¹⁴ Ibid., 150. Also: “...the dogmas of this religion are of concern to the State or to its members **insofar as the dogmas bear on morality, and on the duties which anyone who professes it is bound to fulfill toward others.** Beyond this everyone may hold whatever opinions he pleases...For since the sovereign has no competence in the other world, **whatever the subjects’ fate may be in the life to come is none of its business, provided they are good citizens in this life.**” (emphases mine)

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